

109TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Fairness in Asbestos Injury Resolution Act of 2005” or
6 the “FAIR Act of 2005”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. Definitions.

2

TITLE I—ASBESTOS CLAIMS RESOLUTION

SUBTITLE A—OFFICE OF ASBESTOS DISEASE COMPENSATION

- Sec. 101. Establishment of Office of Asbestos Disease Compensation.
- Sec. 102. Advisory Committee on Asbestos Disease Compensation.
- Sec. 103. Medical Advisory Committee.
- Sec. 104. Claimant assistance.
- Sec. 105. Physicians Panels.
- Sec. 106. Program startup.
- Sec. 107. Authority of the Administrator.

SUBTITLE B—ASBESTOS DISEASE COMPENSATION PROCEDURES

- Sec. 111. Essential elements of eligible claim.
- Sec. 112. General rule concerning no-fault compensation.
- Sec. 113. Filing of claims.
- Sec. 114. Eligibility determinations and claim awards.
- Sec. 115. Medical evidence auditing procedures.

SUBTITLE C—MEDICAL CRITERIA

- Sec. 121. Medical criteria requirements.

SUBTITLE D—AWARDS

- Sec. 131. Amount.
- Sec. 132. Medical monitoring.
- Sec. 133. Payment.
- Sec. 134. Reduction in benefit payments for collateral sources.
- Sec. 135. State lien laws.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

SUBTITLE A—ASBESTOS DEFENDANTS FUNDING ALLOCATION

- Sec. 201. Definitions.
- Sec. 202. Authority and tiers.
- Sec. 203. Subtiers.
- Sec. 204. Assessment administration.

SUBTITLE B—ASBESTOS INSURERS COMMISSION

- Sec. 210. Definition.
- Sec. 211. Establishment of Asbestos Insurers Commission.
- Sec. 212. Duties of Asbestos Insurers Commission.
- Sec. 213. Powers of Asbestos Insurers Commission.
- Sec. 214. Personnel matters.
- Sec. 215. Termination of Asbestos Insurers Commission.
- Sec. 216. Expenses and costs of Commission.

SUBTITLE C—ASBESTOS INJURY CLAIMS RESOLUTION FUND

- Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
- Sec. 222. Management of the Fund.
- Sec. 223. Enforcement of payment obligations.
- Sec. 224. Interest on underpayment or nonpayment.
- Sec. 225. Education, consultation, screening, and monitoring.

TITLE III—JUDICIAL REVIEW

- Sec. 301. Judicial review of rules and regulations.
- Sec. 302. Judicial review of award decisions.
- Sec. 303. Judicial review of participants' assessments.
- Sec. 304. Other judicial challenges.
- Sec. 305. Stays, exclusivity, and constitutional review.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. False information.
- Sec. 402. Effect on bankruptcy laws.
- Sec. 403. Effect on other laws and existing claims.
- Sec. 404. Effect on insurance and reinsurance contracts.
- Sec. 405. Annual report of the Administrator.
- Sec. 406. Rules of construction relating to liability of the United States Government.
- Sec. 407. Rules of construction.
- Sec. 408. Violations of environmental and occupational health and safety requirements.
- Sec. 409. Nondiscrimination of health insurance.

TITLE V—ASBESTOS BAN

- Sec. 501. Prohibition on asbestos containing products.

1 SEC. 2. FINDINGS AND PURPOSE.

2 (a) FINDINGS.—Congress finds the following:

3 (1) Millions of Americans have been exposed to
4 forms of asbestos that can have devastating health
5 effects.

6 (2) Various injuries can be caused by exposure
7 to some forms of asbestos, including pleural disease
8 and some forms of cancer.

9 (3) The injuries caused by asbestos can have la-
10 tency periods of up to 40 years, and even limited ex-
11 posure to some forms of asbestos may result in in-
12 jury in some cases.

13 (4) Asbestos litigation has had a significant
14 detrimental effect on the country's economy, driving

1 companies into bankruptcy, diverting resources from
2 those who are truly sick, and endangering jobs and
3 pensions.

4 (5) The scope of the asbestos litigation crisis
5 cuts across every State and virtually every industry.

6 (6) The United States Supreme Court has rec-
7 ognized that Congress must act to create a more ra-
8 tional asbestos claims system. In 1991, a Judicial
9 Conference Ad Hoc Committee on Asbestos Litiga-
10 tion, appointed by Chief Justice William Rehnquist,
11 found that the “ultimate solution should be legisla-
12 tion recognizing the national proportions of the
13 problem . . . and creating a national asbestos dis-
14 pute resolution scheme . . .”. The Court found in
15 1997 in *Amchem Products Inc. v. Windsor*, 521
16 U.S. 591, 595 (1997), that “[t]he argument is sen-
17 sibly made that a nationwide administrative claims
18 processing regime would provide the most secure,
19 fair, and efficient means of compensating victims of
20 asbestos exposure.” In 1999, the Court in *Ortiz v.*
21 *Fibreboard Corp.*, 527 U.S. 819, 821 (1999), found
22 that the “elephantine mass of asbestos cases . . . de-
23 fies customary judicial administration and calls for
24 national legislation.” That finding was again recog-

1 nized in 2003 by the Court in Norfolk & Western
2 Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

3 (7) This crisis, and its significant effect on the
4 health and welfare of the people of the United
5 States, on interstate and foreign commerce, and on
6 the bankruptcy system, compels Congress to exercise
7 its power to regulate interstate commerce and create
8 this legislative solution in the form of a national as-
9 bestos injury claims resolution program to supersede
10 all existing methods to compensate those injured by
11 asbestos, except as specified in this Act.

12 (8) This crisis has also imposed a deleterious
13 burden upon the United States bankruptcy courts,
14 which have assumed a heavy burden of admin-
15 istering complicated and protracted bankruptcies
16 with limited personnel.

17 (b) PURPOSE.—The purpose of this Act is to—

18 (1) create a privately funded, publicly adminis-
19 tered fund to provide the necessary resources for a
20 fair and efficient system to resolve asbestos injury
21 claims that will provide compensation for legitimate
22 present and future claimants of asbestos exposure as
23 provided in this Act;

24 (2) provide compensation to those present and
25 future victims based on the severity of their injuries,

1 while establishing a system flexible enough to accom-
2 modate individuals whose conditions worsens;

3 (3) relieve the Federal and State courts of the
4 burden of the asbestos litigation; and

5 (4) increase economic stability by resolving the
6 asbestos litigation crisis that has bankrupted compa-
7 nies with asbestos liability, diverted resources from
8 the truly sick, and endangered jobs and pensions.

9 **SEC. 3. DEFINITIONS.**

10 In this Act, the following definitions shall apply:

11 (1) ADMINISTRATOR.—The term “Adminis-
12 trator” means the Administrator of the Office of As-
13 bestos Disease Compensation appointed under sec-
14 tion 101(b).

15 (2) ASBESTOS.—The term “asbestos”
16 includes—

17 (A) chrysotile;

18 (B) amosite;

19 (C) crocidolite;

20 (D) tremolite asbestos;

21 (E) winchite asbestos;

22 (F) richterite asbestos;

23 (G) anthophyllite asbestos;

24 (H) actinolite asbestos;

1 (I) any of the minerals listed under sub-
2 paragraphs (A) through (H) that has been
3 chemically treated or altered, and any
4 asbestiform variety, type, or component thereof;
5 and

6 (J) asbestos-containing material, such as
7 asbestos-containing products, automotive or in-
8 dustrial parts or components, equipment, im-
9 provements to real property, and any other ma-
10 terial that contains asbestos in any physical or
11 chemical form.

12 (3) ASBESTOS CLAIM.—

13 (A) IN GENERAL.—The term “asbestos
14 claim” means any claim, premised on any the-
15 ory, allegation, or cause of action for damages
16 or other relief presented in a civil action or
17 bankruptcy proceeding, directly, indirectly, or
18 derivatively arising out of, based on, or related
19 to, in whole or part, the health effects of expo-
20 sure to asbestos, including loss of consortium,
21 wrongful death, and any derivative claim made
22 by, or on behalf of, any exposed person or any
23 representative, spouse, parent, child, or other
24 relative of any exposed person.

1 (B) EXCLUSION.—The term does not in-
2 clude claims alleging damage or injury to tan-
3 gible property, or claims for benefits under a
4 workers’ compensation law or veterans’ benefits
5 program.

6 (4) ASBESTOS CLAIMANT.—The term “asbestos
7 claimant” means an individual who files a claim
8 under section 113.

9 (5) CIVIL ACTION.—The term “civil action”
10 means all suits of a civil nature in State or Federal
11 court, whether cognizable as cases at law or in eq-
12 uity or in admiralty, but does not include an action
13 relating to any workers’ compensation law, or a pro-
14 ceeding for benefits under any veterans’ benefits
15 program.

16 (6) COLLATERAL SOURCE COMPENSATION.—
17 The term “collateral source compensation” means
18 the compensation that the claimant received, or is
19 entitled to receive, from a defendant or an insurer
20 of that defendant, or compensation trust as a result
21 of a judgment or settlement for an asbestos-related
22 injury that is the subject of a claim filed under sec-
23 tion 113.

24 (7) ELIGIBLE DISEASE OR CONDITION.—The
25 term “eligible disease or condition” means, to the

1 extent that the illness meets the medical criteria re-
2 quirements established under subtitle C of title I, as-
3 bestosis/pleural disease, severe asbestosis disease,
4 disabling asbestosis disease, mesothelioma, lung can-
5 cer I, lung cancer II, lung cancer III, and other can-
6 cers.

7 (8) FUND.—The term “Fund” means the As-
8 bestos Injury Claims Resolution Fund established
9 under section 221.

10 (9) INSURANCE RECEIVERSHIP PROCEEDING.—
11 The term “insurance receivership proceeding” means
12 any State proceeding with respect to a financially
13 impaired or insolvent insurer or reinsurer including
14 the liquidation, rehabilitation, conservation, super-
15 vision, or ancillary receivership of an insurer under
16 State law.

17 (10) LAW.—The term “law” includes all law,
18 judicial or administrative decisions, rules, regula-
19 tions, or any other principle or action having the ef-
20 fect of law.

21 (11) PARTICIPANT.—

22 (A) IN GENERAL.—The term “participant”
23 means any person subject to the funding re-
24 quirements of title II, including—

1 (i) any defendant participant subject
2 to liability for payments under subtitle A
3 of that title;

4 (ii) any insurer participant subject to
5 a payment under subtitle B of that title;
6 and

7 (iii) any successor in interest of a par-
8 ticipant.

9 (B) EXCEPTION.—

10 (i) IN GENERAL.—A defendant partic-
11 ipant shall not include any person pro-
12 tected from any asbestos claim by reason
13 of an injunction entered in connection with
14 a plan of reorganization under chapter 11
15 of title 11, United States Code, that has
16 been confirmed by a duly entered order or
17 judgment of a court that is no longer sub-
18 ject to any appeal or judicial review, and
19 the substantial consummation, as such
20 term is defined in section 1101(2) of title
21 11, United States Code, of such plan of re-
22 organization has occurred.

23 (ii) APPLICABILITY.—Clause (i) shall
24 not apply to a person who may be liable
25 under subtitle A of title II based on prior

1 asbestos expenditures related to asbestos
2 claims that are not covered by an injunc-
3 tion described under clause (i).

4 (12) PERSON.—The term “person”—

5 (A) means an individual, trust, firm, joint
6 stock company, partnership, association, insur-
7 ance company, reinsurance company, or cor-
8 poration; and

9 (B) does not include the United States,
10 any State or local government, or subdivision
11 thereof, including school districts and any gen-
12 eral or special function governmental unit es-
13 tablished under State law.

14 (13) STATE.—The term “State” means any
15 State of the United States and also includes the Dis-
16 trict of Columbia, Commonwealth of Puerto Rico,
17 the Northern Mariana Islands, the Virgin Islands,
18 Guam, American Samoa, and any other territory or
19 possession of the United States or any political sub-
20 division of any of the entities under this paragraph.

21 (14) SUBSTANTIALLY CONTINUES.—The term
22 “substantially continues” means that the business
23 operations have not been significantly modified by
24 the change in ownership.

1 (15) SUCCESSOR IN INTEREST.—The term
2 “successor in interest” means any person that ac-
3 quires assets, and substantially continues the busi-
4 ness operations, of a participant. The factors to be
5 considered in determining whether a person is a suc-
6 cessor in interest include—

7 (A) retention of the same facilities or loca-
8 tion;

9 (B) retention of the same employees;

10 (C) maintaining the same job under the
11 same working conditions;

12 (D) retention of the same supervisory per-
13 sonnel;

14 (E) continuity of assets;

15 (F) production of the same product or
16 offer of the same service;

17 (G) retention of the same name;

18 (H) maintenance of the same customer
19 base;

20 (I) identity of stocks, stockholders, and di-
21 rectors between the asset seller and the pur-
22 chaser; or

23 (J) whether the successor holds itself out
24 as continuation of previous enterprise, but ex-
25 pressly does not include whether the person ac-

1 tually knew of the liability of the participant
2 under this Act.

3 (16) VETERANS' BENEFITS PROGRAM.—The
4 term “veterans’ benefits program” means any pro-
5 gram for benefits in connection with military service
6 administered by the Veterans’ Administration under
7 title 38, United States Code.

8 (17) WORKERS' COMPENSATION LAW.—The
9 term “workers’ compensation law”—

10 (A) means a law respecting a program ad-
11 ministered by a State or the United States to
12 provide benefits, funded by a responsible em-
13 ployer or its insurance carrier, for occupational
14 diseases or injuries or for disability or death
15 caused by occupational diseases or injuries;

16 (B) includes the Longshore and Harbor
17 Workers’ Compensation Act (33 U.S.C. 901 et
18 seq.) and chapter 81 of title 5, United States
19 Code; and

20 (C) does not include the Act of April 22,
21 1908 (45 U.S.C. 51 et seq.), commonly known
22 as the Employers’ Liability Act, or damages re-
23 covered by any employee in a liability action
24 against an employer.

1 **TITLE I—ASBESTOS CLAIMS**
2 **RESOLUTION**
3 **Subtitle A—Office of Asbestos**
4 **Disease Compensation**

5 **SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DIS-**
6 **EASE COMPENSATION.**

7 (a) IN GENERAL.—

8 (1) ESTABLISHMENT.—There is established
9 within the Department of Labor the Office of Asbes-
10 tos Disease Compensation (hereinafter referred to in
11 this Act as the “Office”), which shall be headed by
12 an Administrator.

13 (2) PURPOSE.—The purpose of the Office is to
14 provide timely, fair compensation, in the amounts
15 and under the terms specified in this Act, on a no-
16 fault basis and in a non-adversarial manner, to indi-
17 viduals whose health has been adversely affected by
18 exposure to asbestos.

19 (3) EXPENSES.—There shall be available from
20 the Asbestos Injury Claims Resolution Fund to the
21 Administrator such sums as are necessary for the
22 administrative expenses of the Office, including the
23 sums necessary for conducting the studies provided
24 for in section 121(e).

25 (b) APPOINTMENT OF ADMINISTRATOR.—

1 (1) IN GENERAL.—The Administrator of the
2 Office of Asbestos Disease Compensation shall be
3 appointed by the President, by and with the advice
4 and consent of the Senate. The Administrator shall
5 serve for a term of 5 years.

6 (2) REPORTING.—The Administrator shall re-
7 port directly to the Assistant Secretary of Labor for
8 the Employment Standards Administration.

9 (c) DUTIES OF ADMINISTRATOR.—

10 (1) IN GENERAL.—The Administrator shall be
11 responsible for—

12 (A) processing claims for compensation for
13 asbestos-related injuries and paying compensa-
14 tion to eligible claimants under the criteria and
15 procedures established under title I;

16 (B) determining, levying, and collecting as-
17 sessments on participants under title II;

18 (C) appointing or contracting for the serv-
19 ices of such personnel, making such expendi-
20 tures, and taking any other actions as may be
21 necessary and appropriate to carry out the re-
22 sponsibilities of the Office, including entering
23 into cooperative agreements with other Federal
24 agencies or State agencies and entering into
25 contracts with non-governmental entities;

1 (D) conducting such audits and additional
2 oversight as necessary to assure the integrity of
3 the program;

4 (E) managing the Asbestos Injury Claims
5 Resolution Fund established under section 221,
6 including—

7 (i) administering, in a fiduciary capac-
8 ity, the assets of the Fund for the exclu-
9 sive purpose of providing benefits to asbes-
10 tos claimants and their beneficiaries;

11 (ii) defraying the reasonable expenses
12 of administering the Fund;

13 (iii) investing the assets of the Fund
14 in accordance with section 222(b);

15 (iv) retaining advisers, managers, and
16 custodians who possess the necessary fa-
17 cilities and expertise to provide for the
18 skilled and prudent management of the
19 Fund, to assist in the development, imple-
20 mentation and maintenance of the Fund's
21 investment policies and investment activi-
22 ties, and to provide for the safekeeping and
23 delivery of the Fund's assets; and

24 (v) borrowing amounts authorized by
25 section 221(b) on appropriate terms and

1 conditions, including pledging the assets of
2 or payments to the Fund as collateral;

3 (F) promulgating such rules, regulations,
4 and procedures as may be necessary and appro-
5 priate to implement the provisions of this Act;

6 (G) making such expenditures as may be
7 necessary and appropriate in the administration
8 of this Act;

9 (H) excluding evidence and disqualifying or
10 debarring any attorney, physician, provider of
11 medical or diagnostic services, including labora-
12 tories and others who provide evidence in sup-
13 port of a claimant's application for compensa-
14 tion where the Administrator determines that
15 materially false, fraudulent, or fictitious state-
16 ments or practices have been submitted or en-
17 gaged in by such individuals or entities; and

18 (I) having all other powers incidental, nec-
19 essary, or appropriate to carrying out the func-
20 tions of the Office.

21 (2) CERTAIN ENFORCEMENTS.—For each in-
22 fraction relating to paragraph (1)(H), the Adminis-
23 trator also may impose a civil penalty not to exceed
24 \$10,000 on any person or entity found to have sub-
25 mitted or engaged in a materially false, fraudulent,

1 or fictitious statement or practice under this Act.
2 The Administrator shall prescribe appropriate regu-
3 lations to implement paragraph (1)(H).

4 (3) SELECTION OF DEPUTY ADMINISTRA-
5 TORS.—The Administrator shall select a Deputy Ad-
6 ministrator for Claims Administration to carry out
7 the Administrator’s responsibilities under this title
8 and a Deputy Administrator for Fund Management
9 to carry out the Administrator’s responsibilities
10 under title II of this Act. The Deputy Administra-
11 tors shall report directly to the Administrator and
12 shall be in the Senior Executive Service.

13 (d) EXPEDITIOUS DETERMINATIONS.—The Adminis-
14 trator shall prescribe rules to expedite claims for asbestos
15 claimants with exigent circumstances.

16 (e) AUDIT AND PERSONNEL REVIEW PROCE-
17 DURES.—The Administrator shall establish audit and per-
18 sonnel review procedures for evaluating the accuracy of
19 eligibility recommendations of agency and contract per-
20 sonnel.

21 (f) APPLICATION OF FOIA.—

22 (1) IN GENERAL.—Section 552 of title 5,
23 United States Code (commonly referred to as the
24 Freedom of Information Act) shall apply to the Of-

1 fice of Asbestos Disease Compensation and the As-
2 bestos Insurers Commission.

3 (2) CONFIDENTIALITY.—Any person may des-
4 ignate any record submitted under this section as a
5 confidential commercial or financial record for pur-
6 poses of section 552 of title 5, United States Code.
7 The Administrator and the Chairman of the Asbes-
8 tos Insurers Commission shall adopt procedures for
9 designating such records as confidential. Information
10 on reserves and asbestos-related liabilities submitted
11 by any participant for the purpose of the allocation
12 of payments under subtitles A and B of title II shall
13 be deemed to be confidential financial records.

14 **SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE**
15 **COMPENSATION.**

16 (a) ESTABLISHMENT.—

17 (1) IN GENERAL.—Not later than 120 days
18 after the date of enactment of this Act, the Adminis-
19 trator shall establish an Advisory Committee on As-
20 bestos Disease Compensation (hereinafter the “Advi-
21 sory Committee”).

22 (2) COMPOSITION AND APPOINTMENT.—The
23 Advisory Committee shall be composed of 24 mem-
24 bers, appointed as follows—

1 (A) The Majority and Minority Leaders of
2 the Senate, the Speaker of the House, and the
3 Minority Leader of the House shall each ap-
4 point 4 members. Of the 4—

5 (i) 2 shall be selected to represent the
6 interests of claimants, at least 1 of whom
7 shall be selected from among individuals
8 recommended by recognized national labor
9 federations; and

10 (ii) 2 shall be selected to represent the
11 interests of participants, 1 of whom shall
12 be selected to represent the interests of the
13 insurer participants and 1 of whom shall
14 be selected to represent the interests of the
15 defendant participants.

16 (B) The Administrator shall appoint 8
17 members, who shall be individuals with quali-
18 fications and expertise in occupational or pul-
19 monary medicine, occupational health, workers'
20 compensation programs, financial administra-
21 tion, investment of funds, program auditing, or
22 other relevant fields.

23 (3) QUALIFICATIONS.—All of the members de-
24 scribed in paragraph (2) shall have expertise or ex-
25 perience relevant to the asbestos compensation pro-

1 gram, including experience or expertise in diagnosing
2 asbestos-related diseases and conditions, assessing
3 asbestos exposure and health risks, filing asbestos
4 claims, administering a compensation or insurance
5 program, or as actuaries, auditors, or investment
6 managers. None of the members described in para-
7 graph (2)(B) shall be individuals who, for each of
8 the 5 years before their appointments, earned more
9 than 15 percent of their income by serving in mat-
10 ters related to asbestos litigation as consultants or
11 expert witnesses.

12 (b) DUTIES.—The Advisory Committee shall advise
13 the Administrator on—

14 (1) claims filing and claims processing proce-
15 dures;

16 (2) claimant assistance programs;

17 (3) audit procedures and programs to ensure
18 the quality and integrity of the compensation pro-
19 gram;

20 (4) the development of a list of industries, occu-
21 pations and time periods for which there is a pre-
22 sumption of substantial occupational exposure to as-
23 bestos;

1 (5) recommended analyses or research that
2 should be conducted to evaluate past claims and to
3 project future claims under the program;

4 (6) the annual report required to be submitted
5 to Congress under section 405; and

6 (7) such other matters related to the implemen-
7 tation of this Act as the Administrator considers ap-
8 propriate.

9 (c) OPERATION OF THE COMMITTEE.—

10 (1) Each member of the Advisory Committee
11 shall be appointed for a term of 3 years, except that,
12 of the members first appointed—

13 (A) 8 shall be appointed for a term of 1
14 year;

15 (B) 8 shall be appointed for a term of 2
16 years; and

17 (C) 8 shall be appointed for a term of 3
18 years, as determined by the Administrator at
19 the time of appointment.

20 (2) Any member appointed to fill a vacancy oc-
21 curring before the expiration of the term shall be ap-
22 pointed only for the remainder of such term.

23 (3) The Administrator shall designate a Chair-
24 person and Vice Chairperson from among members

1 of the Advisory Committee appointed under sub-
2 section (a)(2)(B).

3 (4) The Advisory Committee shall meet at the
4 call of the Chairperson or the majority of its mem-
5 bers, and at a minimum shall meet at least 4 times
6 per year during the first 5 years of the asbestos
7 compensation program, and at least 2 times per year
8 thereafter.

9 (5) The Administrator shall provide to the
10 Committee such information as is necessary and ap-
11 propriate for the Committee to carry out its respon-
12 sibilities under this section. The Administrator may,
13 upon request of the Advisory Committee, secure di-
14 rectly from any Federal, State, or local department
15 or agency such information as may be necessary and
16 appropriate to enable the Advisory Committee to
17 carry out its duties under this section. Upon request
18 of the Administrator, the head of such department
19 or agency shall furnish such information to the Advi-
20 sory Committee.

21 (6) The Administrator shall provide the Advi-
22 sory Committee with such administrative support as
23 is reasonably necessary to enable it to perform its
24 functions.

1 (d) EXPENSES.—Members of the Advisory Com-
2 mittee, other than full-time employees of the United
3 States, while attending meetings of the Advisory Com-
4 mittee or while otherwise serving at the request of the Ad-
5 ministrator, and while serving away from their homes or
6 regular places of business, shall be allowed travel and meal
7 expenses, including per diem in lieu of subsistence, as au-
8 thorized by section 5703 of title 5, United States Code,
9 for individuals in the Government serving without pay.

10 **SEC. 103. MEDICAL ADVISORY COMMITTEE.**

11 (a) IN GENERAL.—The Administrator shall establish
12 a Medical Advisory Committee to provide expert advice re-
13 garding medical issues arising under the statute.

14 (b) QUALIFICATIONS.—None of the members of the
15 Medical Advisory Committee shall be individuals who, for
16 each of the 5 years before their appointments, earned
17 more than 15 percent of their income by serving in mat-
18 ters related to asbestos litigation as consultants or expert
19 witnesses.

20 **SEC. 104. CLAIMANT ASSISTANCE.**

21 (a) ESTABLISHMENT.—Not later than 180 days after
22 the enactment of this Act, the Administrator shall estab-
23 lish a comprehensive asbestos claimant assistance program
24 to—

1 (1) publicize and provide information to poten-
2 tial claimants about the availability of benefits for
3 eligible claimants under this Act, and the procedures
4 for filing claims and for obtaining assistance in fil-
5 ing claims;

6 (2) provide assistance to potential claimants in
7 preparing and submitting claims, including assist-
8 ance in obtaining the documentation necessary to
9 support a claim;

10 (3) respond to inquiries from claimants and po-
11 tential claimants;

12 (4) provide training with respect to the applica-
13 ble procedures for the preparation and filing of
14 claims to persons who provide assistance or rep-
15 resentation to claimants; and

16 (5) provide for the establishment of a website
17 where claimants may access all relevant forms and
18 information.

19 (b) **RESOURCE CENTERS.**—The claimant assistance
20 program shall provide for the establishment of resource
21 centers in areas where there are determined to be large
22 concentrations of potential claimants. These centers shall
23 be located, to the extent feasible, in facilities of the De-
24 partment of Labor or other Federal agencies.

1 (c) CONTRACTS.—The claimant assistance program
2 may be carried out in part through contracts with labor
3 organizations, community-based organizations, and other
4 entities which represent or provide services to potential
5 claimants, except that such organizations may not have
6 a financial interest in the outcome of claims filed with the
7 Office.

8 (d) LEGAL ASSISTANCE.—

9 (1) IN GENERAL.—As part of the program es-
10 tablished under subsection (a), the Administrator
11 shall establish a legal assistance program to provide
12 assistance to asbestos claimants concerning legal
13 representation issues.

14 (2) LIST OF QUALIFIED ATTORNEYS.—As part
15 of the program, the Administrator shall maintain a
16 roster of qualified attorneys who have agreed to pro-
17 vide pro bono services to asbestos claimants under
18 rules established by the Administrator. The claim-
19 ants shall not be required to use the attorneys listed
20 on such roster.

21 (3) NOTICE BY ADMINISTRATOR.—The Admin-
22 istrator shall provide asbestos claimants with notice
23 of, and information relating to—

24 (A) pro bono services for legal assistance
25 available to those claimants; and

1 (B) any limitations on attorneys fees for
2 claims filed under this title.

3 (e) ATTORNEY'S FEES.—

4 (1) IN GENERAL.—Notwithstanding any con-
5 tract, the representative of an individual may not re-
6 ceive, for services rendered in connection with the
7 claim of an individual under this Act, more than
8 that percentage specified in paragraph (2) of an
9 award made under this Act on such claim.

10 (2) APPLICABLE PERCENTAGE LIMITATIONS.—

11 (A) IN GENERAL.—The percentage limita-
12 tion under paragraph (1) shall be—

13 (i) 10 percent for the filing of an ini-
14 tial claim; and

15 (ii) 20 percent with respect to any
16 claim under administrative appellate re-
17 view, which shall include the work for the
18 initial claim.

19 (B) EXCEPTIONS.—The Administrator
20 may by rule adopt a lower or higher percentage
21 limitation for particular classes of cases if the
22 Administrator finds that—

23 (i) the percentage limitation otherwise
24 applicable under this paragraph would re-
25 sult in unreasonable compensation to

1 claimants' representatives in such cases;
2 and

3 (ii) in the case of a lower percentage
4 limitation, the limitation would not unduly
5 limit the availability of representatives to
6 claimants.

7 (3) PENALTY.—Any representative of an asbes-
8 tos claimant who violates this subsection shall be
9 fined not more than the greater of—

10 (A) \$5,000; or

11 (B) twice the amount received by the rep-
12 resentative for services rendered in connection
13 with each such violation.

14 **SEC. 105. PHYSICIANS PANELS.**

15 (a) APPOINTMENT.—The Administrator shall, in ac-
16 cordance with section 3109 of title 5, United States Code,
17 appoint physicians with experience and competency in di-
18 agnosing asbestos-related diseases to be available to serve
19 on Physicians Panels, as necessary to carry out this Act.

20 (b) FORMATION OF PANELS.—

21 (1) IN GENERAL.—The Administrator shall pe-
22 riodically determine—

23 (A) the number of Physicians Panels nec-
24 essary for the efficient conduct of the medical
25 review process under section 121;

1 (B) the number of Physicians Panels nec-
2 essary for the efficient conduct of the excep-
3 tional medical claims process under section 121;
4 and

5 (C) the particular expertise necessary for
6 each panel.

7 (2) EXPERTISE.—Each Physicians Panel shall
8 be composed of members having the particular ex-
9 pertise determined necessary by the Administrator,
10 randomly selected from among the physicians ap-
11 pointed under subsection (a) having such expertise.

12 (3) PANEL MEMBERS.—Each Physicians Panel
13 shall consist of 3 physicians, 2 of whom shall be des-
14 ignated to participate in each case submitted to the
15 Physicians Panel, and the third of whom shall be
16 consulted in the event of disagreement.

17 (c) QUALIFICATIONS.—To be eligible to serve on a
18 Physicians Panel under subsection (a), a person shall be—

19 (1) a physician licensed in any State;

20 (2) board-certified in pulmonary medicine, occu-
21 pational medicine, internal medicine, oncology, or
22 pathology; and

23 (3) an individual who, for each of the 5 years
24 before and during his or her appointment to a Phy-
25 sicians Panel, has earned not more than 15 percent

1 of his or her income as an employee of a partici-
2 pating defendant or insurer or a law firm rep-
3 resenting any party in asbestos litigation or as a
4 consultant or expert witness in matters related to
5 asbestos litigation.

6 (d) DUTIES.—Members of a Physicians Panel shall—

7 (1) make such medical determinations as are
8 required to be made by Physicians Panels under sec-
9 tion 121; and

10 (2) perform such other functions as required
11 under this Act.

12 (e) COMPENSATION.—Notwithstanding any limitation
13 otherwise established under section 3109 of title 5, United
14 States Code, the Administrator shall be authorized to pay
15 members of a Physician Panel such compensation as is
16 reasonably necessary to obtain their services.

17 (f) FEDERAL ADVISORY COMMITTEE ACT.—A Physi-
18 cians Panel established under this section shall not be sub-
19 ject to the Federal Advisory Committee Act (5 U.S.C.
20 App. 2).

21 **SEC. 106. PROGRAM STARTUP.**

22 (a) INTERIM REGULATIONS.—Not later than 90 days
23 after the date of enactment of this Act, the Administrator
24 shall promulgate interim regulations and procedures for
25 the processing of claims under title I and the operation

1 of the Fund under title II, including procedures for the
2 expediting of exigent claims.

3 (b) INTERIM PERSONNEL.—The Secretary of Labor
4 and the Assistant Secretary of Labor for the Employment
5 Standards Administration may make available to the Ad-
6 ministrator on a temporary basis such personnel and other
7 resources as may be necessary to facilitate the expeditious
8 startup of the program. The Administrator may in addi-
9 tion contract with individuals or entities having relevant
10 experience to assist in the expeditious startup of the pro-
11 gram. Such relevant experience shall include, but not be
12 limited to, experience with the review of workers' com-
13 pensation, occupational disease, or similar claims and with
14 financial matters relevant to the operation of the program.

15 (c) EXIGENT HEALTH CLAIMS.—

16 (1) IN GENERAL.—The Administrator shall de-
17 velop procedures to provide for an expedited process
18 to categorize, evaluate, and pay exigent health
19 claims. Such procedures shall include, pending pro-
20 mulgation of final regulations, adoption of interim
21 regulations as needed for processing of exigent
22 claims.

23 (2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A
24 claim shall qualify for treatment as an exigent

1 health claim if the claimant is living and the claim-
2 ant provides—

3 (A) documentation that a physician has di-
4 agnosed the claimant as having mesothelioma;
5 or

6 (B) a declaration or affidavit, from a phy-
7 sician who has examined the claimant within
8 120 days before the date of such declaration or
9 affidavit, that the physician has diagnosed the
10 claimant as being terminally ill from an asbes-
11 tos-related illness and having a life expectancy
12 of less than 1 year.

13 (3) **ADDITIONAL EXIGENT HEALTH CLAIMS.**—
14 The Administrator may, in final regulations promul-
15 gated under section 101(c), designate additional cat-
16 egories of claims that qualify as exigent health
17 claims under this subsection.

18 (d) **EXTREME FINANCIAL HARDSHIP CLAIMS.**—The
19 Administrator may, in final regulations promulgated
20 under section 101(c), designate categories of claims to be
21 handled on an expedited basis as a result of extreme finan-
22 cial hardship.

23 (e) **INTERIM ADMINISTRATOR.**—Until an Adminis-
24 trator is appointed and confirmed under section 101(b),
25 the responsibilities of the Administrator under this Act

1 shall be performed by the Assistant Secretary of Labor
2 for the Employment Standards Administration, who shall
3 have all the authority conferred by this Act on the Admin-
4 istrator and who shall be deemed to be the Administrator
5 for purposes of this Act. Before final regulations being
6 promulgated relating to claims processing, the Interim Ad-
7 ministrator may prioritize claims processing, without re-
8 gard to the time requirements prescribed in subtitle B of
9 this title, based on severity of illness and likelihood that
10 the illness in question was caused by exposure to asbestos.

11 (f) STAY OF CLAIMS; RETURN TO TORT SYSTEM.—

12 (1) STAY OF CLAIMS.—Notwithstanding any
13 other provision of this Act, any asbestos claim pend-
14 ing as of the date of enactment of this Act, other
15 than a claim for which a verdict or final order or
16 judgment has been granted, shall be subject to a
17 stay.

18 (2) PURSUAL OF EXIGENT HEALTH CLAIMS IN
19 FEDERAL OR STATE COURT.—

20 (A) IN GENERAL.—Notwithstanding any
21 other provision of this Act, if, not later than
22 180 days after the date of enactment of this
23 Act, the Administrator cannot certify to Con-
24 gress that the Fund is operational and proce-
25 dures are in place to review and pay exigent

1 health claims at a reasonable rate, each person
2 that has filed an exigent health claim stayed
3 under paragraph (1)(A), or with such a claim
4 arising after the date of enactment of this Act,
5 may pursue that claim in a Federal district
6 court or State court located within—

7 (i) the State of residence of the claim-
8 ant; or

9 (ii) the State in which the asbestos-re-
10 lated injury arose.

11 (B) DEFENDANTS NOT FOUND.—If any
12 defendant cannot be found in the State de-
13 scribed in clause (i) or (ii) of subparagraph (A),
14 the claim may be pursued only against that de-
15 fendant in the Federal district court or State
16 court located within any State in which the de-
17 fendant may be found.

18 (C) DETERMINATION OF MOST APPRO-
19 PRIATE FORUM.—If a person alleges that the
20 asbestos-related injury occurred in more than 1
21 county (or Federal district), the trial court shall
22 determine which State and county (or Federal
23 district) is the most appropriate forum for the
24 claim. If the court determines that another
25 forum would be the most appropriate forum for

1 a claim, the court shall dismiss the claim. Any
2 otherwise applicable statute of limitations shall
3 be tolled beginning on the date the claim was
4 filed and ending on the date the claim is dis-
5 missed under this subparagraph.

6 (3) PURSUAL OF ASBESTOS CLAIMS IN FED-
7 ERAL OR STATE COURT.—

8 (A) IN GENERAL.—Notwithstanding any
9 other provision of this Act, if, not later than
10 360 days after the date of enactment of this
11 Act, the Administrator cannot certify to Con-
12 gress that the Fund is operational and paying
13 all valid claims at a reasonable rate, any person
14 with an asbestos claim stayed under paragraph
15 (1), or with an asbestos claim arising after the
16 date of enactment of this Act, may pursue that
17 claim in the Federal district court or State
18 court located within—

19 (i) the State of residence of the claim-
20 ant; or

21 (ii) the State in which the asbestos-re-
22 lated injury arose.

23 (B) DEFENDANTS NOT FOUND.—If any
24 defendant cannot be found in the State de-
25 scribed in clause (i) or (ii) of subparagraph (A),

1 the claim may be pursued in the Federal dis-
2 trict court or State court located within any
3 State in which the defendant may be found.

4 (C) DETERMINATION OF MOST APPRO-
5 PRIATE FORUM.—If a person alleges that the
6 asbestos-related injury occurred in more than 1
7 county (or Federal district), the trial court shall
8 determine which State and county (or Federal
9 district) is the most appropriate forum for the
10 claim. If the court determines that another
11 forum would be the most appropriate forum for
12 a claim, the court shall dismiss the claim. Any
13 otherwise applicable statute of limitations shall
14 be tolled beginning on the date the claim was
15 filed and ending on the date the claim is dis-
16 missed under this subparagraph.

17 (4) SUNSET.—This subsection shall have no ef-
18 fect after the date the Administrator certifies to
19 Congress that the Fund is operational and paying
20 claims at a reasonable rate, except that any case
21 that has been filed or revived pursuant to this sub-
22 section in a Federal or State court may, at the op-
23 tion of the claimant, remain in that court.

1 **SEC. 107. AUTHORITY OF THE ADMINISTRATOR.**

2 The Administrator, on any matter within the jurisdic-
3 tion of the Administrator under this Act, may—

4 (1) issue subpoenas for and compel the attend-
5 ance of witnesses within a radius of 200 miles;

6 (2) administer oaths;

7 (3) examine witnesses; and

8 (4) require the production of books, papers,
9 documents, and other evidence.

10 **Subtitle B—Asbestos Disease**
11 **Compensation Procedures**

12 **SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.**

13 To be eligible for an award under this Act for an as-
14 bestos-related disease or injury, an individual shall—

15 (1) file a claim in a timely manner in accord-
16 ance with section 113; and

17 (2) prove, by a preponderance of the evidence,
18 that the claimant suffers from an eligible disease or
19 condition, as demonstrated by evidence that meets
20 the requirements established under subtitle C.

21 **SEC. 112. GENERAL RULE CONCERNING NO-FAULT COM-**
22 **PENSATION.**

23 An asbestos claimant shall not be required to dem-
24 onstrate that the asbestos-related injury for which the
25 claim is being made resulted from the negligence or other
26 fault of any other person.

1 **SEC. 113. FILING OF CLAIMS.**

2 (a) WHO MAY SUBMIT.—

3 (1) IN GENERAL.—Any individual who has suf-
4 fered from a disease or condition that is believed to
5 meet the requirements established under subtitle C
6 (or the personal representative of the individual, if
7 the individual is deceased or incompetent) may file
8 a claim with the Office for an award with respect to
9 such injury.

10 (2) DEFINITION.—In this Act, the term “per-
11 sonal representative” shall have the same meaning
12 as that term is defined in section 104.4 of title 28
13 of the Code of Federal Regulations, as in effect on
14 December 31, 2004.

15 (3) LIMITATION.—A claim may not be filed by
16 any person seeking contribution or indemnity.

17 (b) STATUTE OF LIMITATIONS.—

18 (1) IN GENERAL.—Except as otherwise pro-
19 vided in this subsection, if an individual fails to file
20 a claim with the Office under this section within 4
21 years after the date on which the individual first—

22 (A) received a medical diagnosis of an eli-
23 gible disease or condition as provided for under
24 this subtitle and subtitle C; or

1 (B) discovered facts that would have led a
2 reasonable person to obtain a medical diagnosis
3 with respect to an eligible disease or condition,
4 any claim relating to that injury, and any other as-
5 bestos claim related to that injury, shall be extin-
6 guished, and any recovery thereon shall be prohib-
7 ited.

8 (2) EXCEPTION.—The statute of limitations in
9 paragraph (1) does not apply to the progression of
10 non-malignant diseases once the initial claim has
11 been filed.

12 (3) EFFECT ON PENDING CLAIMS.—If an asbes-
13 tos claimant has any timely filed asbestos claim that
14 is pending in a Federal or State court, for which a
15 verdict or final order or judgment has not been duly
16 entered by a court and is still subject to any appeal
17 or judicial review, or with a trust established under
18 title 11, United States Code, on the date of enact-
19 ment of this Act, such claimant shall file a claim
20 under this section within 4 years after such date of
21 enactment, or any claim relating to that injury, and
22 any other asbestos claim related to that injury shall
23 be extinguished, and recovery there shall be prohib-
24 ited. For purposes of this paragraph, a claim shall
25 not be treated as pending with a trust established

1 under title 11, United States Code, solely because a
2 claimant whose claim was previously compensated by
3 the trust has or alleges—

4 (A) a non-contingent right to the payment
5 of future installments of a fixed award; or

6 (B) a contingent right to recover some ad-
7 ditional amount from the trust on the occur-
8 rence of a future event, such as the reevaluation
9 of the trust's funding adequacy or projected
10 claims experience.

11 (4) EFFECT OF MULTIPLE INJURIES.—

12 (A) IN GENERAL.—An asbestos claimant
13 who receives an award under this title for an el-
14 igible disease or condition, and who subse-
15 quently develops another such injury, shall be
16 eligible for additional awards under this title
17 (subject to appropriate setoffs for such prior re-
18 covery of any award under this title and from
19 any other collateral source) and the statute of
20 limitations under paragraph (1) shall not begin
21 to run with respect to such subsequent injury
22 until such claimant obtains a medical diagnosis
23 of such other injury or discovers facts that
24 would have led a reasonable person to obtain
25 such a diagnosis.

1 (B) SETOFFS.—Except as provided in sub-
2 paragraph (C), any amounts paid or to be paid
3 for a prior award under this Act shall be de-
4 ducted as a setoff against amounts payable for
5 the second injury claim.

6 (C) EXCEPTION.—Any amounts paid or to
7 be paid for a prior claim for a non-malignant
8 disease (Levels I through V) filed against the
9 Fund shall not be deducted as a setoff against
10 amounts payable for the second injury claim for
11 a malignant disease (Levels VI through X), un-
12 less the malignancy was diagnosed, or the as-
13 bestos claimant had discovered facts that would
14 have led a reasonable person to obtain such a
15 diagnosis, before the date on which the non-ma-
16 lignancy claim was compensated.

17 (c) REQUIRED INFORMATION.—A claim filed under
18 subsection (a) shall be in such form, and contain such in-
19 formation in such detail, as the Administrator shall by
20 regulation prescribe. At a minimum, a claim shall
21 include—

22 (1) the name, social security number, gender,
23 date of birth, and, if applicable, date of death of the
24 claimant;

1 (2) information relating to the identity of de-
2 pendents and beneficiaries of the claimant;

3 (3) a complete employment history of the claim-
4 ant, accompanied by social security records or a
5 signed release permitting access to such records;

6 (4) a description of the asbestos exposure of the
7 claimant, including, to the extent known, informa-
8 tion on the site, or location of exposure, and dura-
9 tion and intensity of exposure;

10 (5) a description of the tobacco product use his-
11 tory of the claimant, including frequency and dura-
12 tion;

13 (6) an identification and description of the as-
14 bestos-related diseases or conditions of the claimant,
15 accompanied by a written report by the claimant's
16 physician with medical diagnoses and x-ray films,
17 and other test results necessary to establish eligi-
18 bility for an award under this Act;

19 (7) a description of any prior or pending civil
20 action or other claim, including any claim under a
21 workers' compensation law, brought by the claimant
22 for asbestos-related injury or any other pulmonary,
23 parenchymal, or pleural injury, including an identi-
24 fication of any recovery of compensation or damages
25 through settlement, judgment, or otherwise;

1 (8) for any claimant who has made a claim for
2 asbestos-related injury or any other pulmonary, pa-
3 renchymal, or pleural injury under a workers' com-
4 pensation law, a certification that the claimant has
5 notified the workers' compensation insurer or self-in-
6 sured employer of the claim made under this Act;
7 and

8 (9) for any claimant who asserts that he or she
9 is a nonsmoker or an ex-smoker, as defined in sec-
10 tion 131, for purposes of an award under Malignant
11 Level VI, Malignant Level VII, Malignant Level
12 VIII, or Malignant Level IX, evidence to support the
13 assertion of nonsmoking or ex-smoking, including
14 relevant medical records.

15 (d) **DATE OF FILING.**—A claim shall be considered
16 to be filed on the date that the claimant mails the claim
17 to the Office, as determined by postmark, or on the date
18 that the claim is received by the Office, whichever is the
19 earliest determinable date.

20 (e) **INCOMPLETE CLAIMS.**—If a claim filed under
21 subsection (a) is incomplete, the Administrator shall notify
22 the claimant of the information necessary to complete the
23 claim and inform the claimant of such services as may
24 be available through the Claimant Assistance Program es-
25 tablished under section 104 to assist the claimant in com-

1 pleting the claim. Any time periods for the processing of
2 the claim shall be suspended until such time as the claim-
3 ant submits the information necessary to complete the
4 claim. If such information is not received within 1 year
5 after the date of such notification, the claim shall be dis-
6 missed.

7 **SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM**
8 **AWARDS.**

9 (a) IN GENERAL.—

10 (1) REVIEW OF CLAIMS.—The Administrator
11 shall, in accordance with this section, determine
12 whether each claim filed under this Act satisfies the
13 requirements for eligibility for an award under this
14 Act and, if so, the value of the award. In making
15 such determinations, the Administrator shall con-
16 sider the claim presented by the claimant, the fac-
17 tual and medical evidence submitted by the claimant
18 in support of the claim, the medical determinations
19 of any Physicians Panel to which a claim is referred
20 under section 121, and the results of such investiga-
21 tion as the Administrator may deem necessary to de-
22 termine whether the claim satisfies the criteria for
23 eligibility established by this Act.

24 (2) ADDITIONAL EVIDENCE.—The Adminis-
25 trator may request the submission of medical evi-

1 dence in addition to the minimum requirements of
2 section 113(c) if necessary or appropriate to make
3 a determination of eligibility for an award, in which
4 case the cost of obtaining such additional informa-
5 tion or testing shall be borne by the Office.

6 (b) PROPOSED DECISIONS.—Not later than 90 days
7 after the filing of a claim, the Administrator shall provide
8 to the claimant (and the claimant’s representative) a pro-
9 posed decision accepting or rejecting the claim in whole
10 or in part and specifying the amount of the proposed
11 award, if any. The proposed decision shall be in writing,
12 shall contain findings of fact and conclusions of law, and
13 shall contain an explanation of the procedure for obtaining
14 review of the proposed decision.

15 (c) REVIEW OF PROPOSED DECISIONS.—

16 (1) RIGHT TO HEARING.—

17 (A) IN GENERAL.—Any claimant not satis-
18 fied with a proposed decision of the Adminis-
19 trator under subsection (b) shall be entitled, on
20 written request made within 90 days after the
21 date of the issuance of the decision, to a hear-
22 ing on the claim of that claimant before a rep-
23 resentative of the Administrator. At the hear-
24 ing, the claimant shall be entitled to present

1 oral evidence and written testimony in further
2 support of that claim.

3 (B) CONDUCT OF HEARING.—When prac-
4 ticable, the hearing will be set at a time and
5 place convenient for the claimant. In conducting
6 the hearing, the representative of the Adminis-
7 trator shall not be bound by common law or
8 statutory rules of evidence, by technical or for-
9 mal rules of procedure, or by section 554 of
10 title 5, United States Code, except as provided
11 by this Act, but shall conduct the hearing in
12 such manner as to best ascertain the rights of
13 the claimant. For this purpose, the representa-
14 tive shall receive such relevant evidence as the
15 claimant adduces and such other evidence as
16 the representative determines necessary or use-
17 ful in evaluating the claim.

18 (C) REQUEST FOR SUBPOENAS.—

19 (i) IN GENERAL.—A claimant may re-
20 quest a subpoena but the decision to grant
21 or deny such a request is within the discre-
22 tion of the representative of the Adminis-
23 trator. The representative may issue sub-
24 poenas for the attendance and testimony of
25 witnesses, and for the production of books,

1 records, correspondence, papers, or other
2 relevant documents. Subpoenas are issued
3 for documents only if they are relevant and
4 cannot be obtained by other means, and
5 for witnesses only where oral testimony is
6 the best way to ascertain the facts.

7 (ii) REQUEST.—A claimant may re-
8 quest a subpoena only as part of the hear-
9 ing process. To request a subpoena, the re-
10 quester shall—

11 (I) submit the request in writing
12 and send it to the representative as
13 early as possible, but no later than 30
14 days after the date of the original
15 hearing request; and

16 (II) explain why the testimony or
17 evidence is directly relevant to the
18 issues at hand, and a subpoena is the
19 best method or opportunity to obtain
20 such evidence because there are no
21 other means by which the documents
22 or testimony could have been ob-
23 tained.

24 (iii) FEES AND MILEAGE.—Any per-
25 son required by such subpoena to attend as

1 a witness shall be allowed and paid the
2 same fees and mileage as are paid wit-
3 nesses in the district courts of the United
4 States. Such fees and mileage shall be paid
5 from the Fund.

6 (2) REVIEW OF WRITTEN RECORD.—In lieu of
7 a hearing under paragraph (1), any claimant not
8 satisfied with a proposed decision of the Adminis-
9 trator shall have the option, on written request made
10 within 90 days after the date of the issuance of the
11 decision, of obtaining a review of the written record
12 by a representative of the Administrator. If such re-
13 view is requested, the claimant shall be afforded an
14 opportunity to submit any written evidence or argu-
15 ment which he or she believes relevant.

16 (d) FINAL DECISIONS.—

17 (1) IN GENERAL.—If the period of time for re-
18 questing review of the proposed decision expires and
19 no request has been filed, or if the claimant waives
20 any objections to the proposed decision, the Admin-
21 istrator shall issue a final decision. If such decision
22 materially differs from the proposed decision, the
23 claimant shall be entitled to review of the decision
24 under subsection (c).

1 (2) TIME AND CONTENT.—If the claimant re-
2 requests review of all or part of the proposed decision
3 the Administrator shall issue a final decision on the
4 claim not later than 180 days after the request for
5 review is received, if the claimant requests a hearing,
6 or not later than 90 days after the request for re-
7 view is received, if the claimant requests review of
8 the written record. Such decision shall be in writing
9 and contain findings of fact and conclusions of law.

10 (e) REPRESENTATION.—A claimant may authorize
11 an attorney or other individual to represent him or her
12 in any proceeding under this Act.

13 **SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.**

14 (a) IN GENERAL.—

15 (1) DEVELOPMENT.—The Administrator shall
16 develop methods for auditing and evaluating the
17 medical evidence submitted as part of a claim. The
18 Administrator may develop additional methods for
19 auditing and evaluating other types of evidence or
20 information received by the Administrator.

21 (2) REFUSAL TO CONSIDER CERTAIN EVI-
22 DENCE.—

23 (A) IN GENERAL.—If the Administrator
24 determines that an audit conducted in accord-
25 ance with the methods developed under para-

1 graph (1) demonstrates that the medical evi-
2 dence submitted by a specific physician or med-
3 ical facility is not consistent with prevailing
4 medical practices or the applicable requirements
5 of this Act, any medical evidence from such
6 physician or facility shall be unacceptable for
7 purposes of establishing eligibility for an award
8 under this Act.

9 (B) NOTIFICATION.—Upon a determina-
10 tion by the Administrator under subparagraph
11 (A), the Administrator shall notify the physi-
12 cian or medical facility involved of the results of
13 the audit. Such physician or facility shall have
14 a right to appeal such determination under pro-
15 cedures issued by the Administrator.

16 (b) REVIEW OF CERTIFIED B-READERS.—

17 (1) IN GENERAL.—At a minimum, the Adminis-
18 trator shall prescribe procedures to randomly assign
19 claims for evaluation by an independent certified B-
20 reader of x-rays submitted in support of a claim, the
21 cost of which shall be borne by the Office.

22 (2) DISAGREEMENT.—If an independent cer-
23 tified B-reader assigned under paragraph (1) dis-
24 agrees with the quality grading or ILO level as-
25 signed to an x-ray submitted in support of a claim,

1 the Administrator shall require a review of such x-
2 rays by a second independent certified B-reader.

3 (3) EFFECT ON CLAIM.—If neither certified B-
4 reader under paragraph (2) agrees with the quality
5 grading and the ILO grade level assigned to an x-
6 ray as part of the claim, the Administrator shall
7 take into account the findings of the 2 independent
8 B readers in making the determination on such
9 claim.

10 (4) CERTIFIED B-READERS.—The Adminis-
11 trator shall maintain a list of a minimum of 50 cer-
12 tified B-readers eligible to participate in the inde-
13 pendent reviews, chosen from all certified B-readers.
14 When an x-ray is sent for independent review, the
15 Administrator shall choose the certified B-reader at
16 random from that list.

17 (c) SMOKING ASSESSMENT.—

18 (1) IN GENERAL.—

19 (A) RECORDS AND DOCUMENTS.—To aid
20 in the assessment of the accuracy of claimant
21 representations as to their smoking status for
22 purposes of determining eligibility and amount
23 of award under Malignant Level VI, Malignant
24 Level VII, Malignant Level VIII, Malignant
25 Level IX, and exceptional medical claims, the

1 Administrator shall have the authority to obtain
2 relevant records and documents, including—

3 (i) records of past medical treatment
4 and evaluation;

5 (ii) affidavits of appropriate individ-
6 uals;

7 (iii) applications for insurance and
8 supporting materials; and

9 (iv) employer records of medical ex-
10 aminations.

11 (B) CONSENT.—The claimant shall provide
12 consent for the Administrator to obtain such
13 records and documents where required.

14 (2) REVIEW.—The frequency of review of
15 records and documents submitted under paragraph
16 (1)(A) shall be at the discretion of the Adminis-
17 trator, but shall address at least 5 percent of the
18 claimants asserting status as nonsmokers or ex-
19 smokers.

20 (3) CONSENT.—The Administrator may require
21 the performance of blood tests or any other appro-
22 priate medical test where claimants assert they are
23 nonsmokers or ex-smokers for purposes of an award
24 under Malignant Level VI, Malignant Level VII,
25 Malignant Level VIII, Malignant Level IX, or as an

1 exceptional medical claim, the cost of which shall be
2 borne by the Office.

3 (4) PENALTY FOR FALSE STATEMENTS.—Any
4 false information submitted under this subsection
5 shall be subject to criminal prosecution or civil pen-
6 alties as provided under section 1348 of title 18,
7 United States Code (as added by this Act) and sec-
8 tion 101(c)(2).

9 **Subtitle C—Medical Criteria**

10 **SEC. 121. MEDICAL CRITERIA REQUIREMENTS.**

11 (a) DEFINITIONS.—In this section, the following defi-
12 nitions shall apply:

13 (1) ASBESTOSIS DETERMINED BY PATHOL-
14 OGY.—The term “asbestosis determined by pathol-
15 ogy” means indications of asbestosis based on the
16 pathological grading system for asbestosis described
17 in the Special Issues of the Archives of Pathology
18 and Laboratory Medicine, “Asbestos-associated Dis-
19 eases”, Vol. 106, No. 11, App. 3 (October 8, 1982).

20 (2) BILATERAL ASBESTOS-RELATED NONMALIGNANT
21 DISEASE.—The term “bilateral asbestos-re-
22 lated nonmalignant disease” means a diagnosis of
23 bilateral asbestos-related nonmalignant disease
24 based on—

1 (A) an x-ray reading of 1/0 or higher
2 based on the ILO grade scale;

3 (B) bilateral pleural plaques;

4 (C) bilateral pleural thickening; or

5 (D) bilateral pleural calcification.

6 (3) BILATERAL PLEURAL DISEASE OF B2.—The
7 term “bilateral pleural disease of B2” means a chest
8 wall pleural thickening or plaque with a maximum
9 width of at least 5 millimeters and a total length of
10 at least $\frac{1}{4}$ of the projection of the lateral chest wall.

11 (4) CERTIFIED B-READER.—The term “cer-
12 tified B-reader” means an individual who is certified
13 by the National Institute of Occupational Safety and
14 Health and whose certification by the National Insti-
15 tute of Occupational Safety and Health is up to
16 date.

17 (5) DIFFUSE PLEURAL THICKENING.—The
18 term “diffuse pleural thickening” means blunting of
19 either costophrenic angle and bilateral pleural plaque
20 or bilateral pleural thickening.

21 (6) DLCO.—The term “DLCO” means the sin-
22 gle-breath diffusing capacity of the lung (carbon
23 monoxide) technique used to measure the volume of
24 carbon monoxide transferred from the alveoli to

1 blood in the pulmonary capillaries for each unit of
2 driving pressure of the carbon monoxide.

3 (7) FEV₁.—The term “FEV₁” means forced
4 expiratory volume (1 second), which is the maximal
5 volume of air expelled in 1 second during perform-
6 ance of the spirometric test for forced vital capacity.

7 (8) FVC.—The term “FVC” means forced vital
8 capacity, which is the maximal volume of air expired
9 with a maximally forced effort from a position of
10 maximal inspiration.

11 (9) ILO GRADE.—The term “ILO grade”
12 means the radiological ratings for the presence of
13 lung changes as determined from a chest x-ray, all
14 as established from time to time by the International
15 Labor Organization.

16 (10) LOWER LIMITS OF NORMAL.—The term
17 “lower limits of normal” means the fifth percentile
18 of healthy populations as defined in the American
19 Thoracic Society statement on lung function testing
20 (Amer. Rev. Resp. Disease 1991, 144:1202–1218)
21 and any future revision of the same statement.

22 (11) NONSMOKER.—The term “nonsmoker”
23 means that the claimant never smoked.

1 uct such that the claimant was exposed on
2 a regular basis to asbestos fibers; or

3 (iv) worked in close proximity to other
4 workers engaged in the activities described
5 under clause (i), (ii), or (iii), such that the
6 claimant was exposed on a regular basis to
7 asbestos fibers.

8 (B) REGULAR BASIS.—In this paragraph,
9 the term “on a regular basis” means on a fre-
10 quent or recurring basis.

11 (15) TLC.—The term “TLC” means total lung
12 capacity, which is the total volume of air in the lung
13 after maximal inspiration.

14 (16) WEIGHTED OCCUPATIONAL EXPOSURE.—

15 (A) IN GENERAL.—The term “weighted oc-
16 cupational exposure” means exposure for a pe-
17 riod of years calculated according to the expo-
18 sure weighting formula under subparagraphs
19 (B) through (E).

20 (B) MODERATE EXPOSURE.—Subject to
21 subparagraph (E), each year that a claimant’s
22 primary occupation, during a substantial por-
23 tion of a normal work year for that occupation,
24 involved working in areas immediate to where
25 asbestos-containing products were being in-

1 stalled, repaired, or removed under cir-
2 cumstances that involved regular airborne emis-
3 sions of asbestos fibers, shall count as 1 year
4 of substantial occupational exposure.

5 (C) HEAVY EXPOSURE.—Subject to sub-
6 paragraph (E), each year that a claimant's pri-
7 mary occupation, during a substantial portion
8 of a normal work year for that occupation, in-
9 volved the direct installation, repair, or removal
10 of asbestos-containing products such that the
11 person was exposed on a regular basis to asbes-
12 tos fibers, shall count as 2 years of substantial
13 occupational exposure.

14 (D) VERY HEAVY EXPOSURE.—Subject to
15 subparagraph (E), each year that a claimant's
16 primary occupation, during a substantial por-
17 tion of a normal work year for that occupation,
18 was in primary asbestos manufacturing, a
19 World War II shipyard, or the asbestos insula-
20 tion trades, such that the person was exposed
21 on a regular basis to asbestos fibers, shall count
22 as 4 years of substantial occupational exposure.

23 (E) DATES OF EXPOSURE.—Each year of
24 exposure calculated under subparagraphs (B),
25 (C), and (D) that occurred before 1976 shall be

1 counted at its full value. Each year from 1976
2 to 1986 shall be counted as $\frac{1}{2}$ of its value.
3 Each year after 1986 shall be counted as $\frac{1}{10}$
4 of its value.

5 (F) OTHER CLAIMS.—Individuals who do
6 not meet the provisions of subparagraphs (A)
7 through (E) and believe their post-1976 or
8 post-1986 exposures exceeded the Occupational
9 Safety and Health Administration standard
10 may submit evidence, documentation, work his-
11 tory, or other information to substantiate non-
12 compliance with the Occupational Safety and
13 Health Administration standard (such as lack
14 of engineering or work practice controls, or pro-
15 tective equipment) such that exposures would
16 be equivalent to exposures before 1976 or 1986,
17 or to documented exposures in similar jobs or
18 occupations where control measures had not
19 been implemented. Claims under this subpara-
20 graph shall be evaluated on an individual basis
21 by a Physicians Panel.

22 (b) MEDICAL EVIDENCE.—

23 (1) LATENCY.—Unless otherwise specified, all
24 diagnoses of an asbestos-related disease for a level
25 under this section shall be accompanied by—

1 (A) a statement by the physician providing
2 the diagnosis that at least 10 years have
3 elapsed between the date of first exposure to as-
4 bestos or asbestos-containing products and the
5 diagnosis; or

6 (B) a history of the claimant's exposure
7 that is sufficient to establish a 10-year latency
8 period between the date of first exposure to as-
9 bestos or asbestos-containing products and the
10 diagnosis.

11 (2) DIAGNOSTIC GUIDELINES.—All diagnoses of
12 asbestos-related diseases shall be based upon—

13 (A) for disease Levels I through V, in the
14 case of a claimant who was living at the time
15 the claim was filed—

16 (i) a physical examination of the
17 claimant by the physician providing the di-
18 agnosis;

19 (ii) an evaluation of smoking history
20 and exposure history before making a diag-
21 nosis;

22 (iii) an x-ray reading by a certified B-
23 reader; and

24 (iv) pulmonary function testing in the
25 case of disease Levels III, IV, and V;

1 (B) for disease Levels I through V, in the
2 case of a claimant who was deceased at the
3 time the claim was filed, a report from a physi-
4 cian based upon a review of the claimant's med-
5 ical records which shall include—

6 (i) pathological evidence of the non-
7 malignant asbestos-related disease; or

8 (ii) an x-ray reading by a certified B-
9 reader;

10 (C) for disease Levels VI through X, in the
11 case of a claimant who was living at the time
12 the claim was filed—

13 (i) a physical examination by the
14 claimant's physician providing the diag-
15 nosis; or

16 (ii) a diagnosis of such a malignant
17 asbestos-related disease, as described in
18 this section, by a board-certified patholo-
19 gist; and

20 (D) for disease Levels VI through X, in
21 the case of a claimant who was deceased at the
22 time the claim was filed—

23 (i) a diagnosis of such a malignant as-
24 bestos-related disease, as described in this

1 section, by a board-certified pathologist;
2 and
3 (ii) a report from a physician based
4 upon a review of the claimant's medical
5 records.

6 (3) CREDIBILITY OF MEDICAL EVIDENCE.—To
7 ensure the medical evidence provided in support of
8 a claim is credible and consistent with recognized
9 medical standards, a claimant under this title may
10 be required to submit—

11 (A) x-rays or computerized tomography;
12 (B) detailed results of pulmonary function
13 tests;
14 (C) laboratory tests;
15 (D) tissue samples;
16 (E) results of medical examinations;
17 (F) reviews of other medical evidence; and
18 (G) medical evidence that complies with
19 recognized medical standards regarding equip-
20 ment, testing methods, and procedure to ensure
21 the reliability of such evidence as may be sub-
22 mitted.

23 (c) EXPOSURE EVIDENCE.—

24 (1) IN GENERAL.—To qualify for any disease
25 level, the claimant shall demonstrate—

1 (A) a minimum exposure to asbestos or as-
2 bestos-containing products;

3 (B) the exposure occurred in the United
4 States, its territories or possessions, or while a
5 United States citizen, while an employee of an
6 entity organized under any Federal or State law
7 regardless of location, or while a United States
8 citizen while serving on any United States
9 flagged or owned ship, provided the exposure
10 results from such employment or service; and

11 (C) any additional asbestos exposure re-
12 quirement under this section.

13 (2) GENERAL EXPOSURE REQUIREMENTS.—In
14 order to establish exposure to asbestos, a claimant
15 shall present meaningful and credible evidence—

16 (A) by an affidavit of the claimant;

17 (B) by an affidavit of a coworker or family
18 member, if the claimant is deceased and such
19 evidence is found in proceedings under this title
20 to be reasonably reliable;

21 (C) by invoices, construction, or similar
22 records; or

23 (D) any other credible evidence.

24 (3) TAKE-HOME EXPOSURE.—

1 (A) IN GENERAL.—A claimant may alter-
2 natively satisfy the medical criteria require-
3 ments of this section where a claim is filed by
4 a person who alleges their exposure to asbestos
5 was the result of living with a person who, if
6 the claim had been filed by that person, would
7 have met the exposure criteria for the given dis-
8 ease level, and the claimant lived with such per-
9 son for the time period necessary to satisfy the
10 exposure requirement, for the claimed disease
11 level.

12 (B) REVIEW.—Except for claims for dis-
13 ease Level X (mesothelioma), all claims alleging
14 take-home exposure shall be submitted as an
15 exceptional medical claim under section 121(f)
16 for review by a Physicians Panel.

17 (4) WAIVER FOR WORKERS AND RESIDENTS OF
18 LIBBY, MONTANA.—Because of the unique nature of
19 the asbestos exposure related to the vermiculite min-
20 ing and milling operations in Libby, Montana, the
21 Administrator shall waive the exposure requirements
22 under this subtitle for individuals who worked at the
23 vermiculite mining and milling facility in Libby,
24 Montana, or lived or worked within a 20-mile radius
25 of Libby, Montana, for at least 12 consecutive

1 months before December 31, 2003. Claimants under
2 this section shall provide such supporting docu-
3 mentation as the Administrator shall require.

4 (5) EXPOSURE PRESUMPTIONS.—The Adminis-
5 trator shall prescribe rules identifying specific indus-
6 tries, occupations within those industries, and time
7 periods for which substantial occupational exposure
8 (as defined under section 121(a)) shall be a rebut-
9 table presumption for asbestos claimants who pro-
10 vide meaningful and credible evidence that the
11 claimant worked in that industry and occupation
12 during such time periods. The Administrator may
13 provide evidence to rebut this presumption.

14 (d) ASBESTOS DISEASE LEVELS.—

15 (1) NONMALIGNANT LEVEL I.—To receive Level
16 I compensation, a claimant shall provide—

17 (A) a diagnosis of bilateral asbestos-related
18 nonmalignant disease; and

19 (B) evidence of 5 years cumulative occupa-
20 tional exposure to asbestos.

21 (2) NONMALIGNANT LEVEL II.—To receive
22 Level II compensation, a claimant shall provide—

23 (A) a diagnosis of bilateral asbestos-related
24 nonmalignant disease with ILO grade of 1/1 or
25 greater, and showing small irregular opacities

1 of shape or size, either ss, st, or tt, and present
2 in both lower lung zones, or asbestosis deter-
3 mined by pathology, or blunting of either
4 costophrenic angle and bilateral pleural plaque
5 or bilateral pleural thickening of at least grade
6 B2 or greater, or bilateral pleural disease of
7 grade B2 or greater;

8 (B) evidence of TLC less than 80 percent
9 or FVC less than the lower limits of normal,
10 and FEV1/FVC ratio less than 65 percent;

11 (C) evidence of 5 or more weighted years
12 of substantial occupational exposure to asbes-
13 tos; and

14 (D) supporting medical documentation es-
15 tablishing asbestos exposure as a contributing
16 factor in causing the pulmonary condition in
17 question.

18 (3) NONMALIGNANT LEVEL III.—To receive
19 Level III compensation a claimant shall provide—

20 (A) a diagnosis of bilateral asbestos-related
21 nonmalignant disease with ILO grade of 1/0 or
22 greater and showing small irregular opacities of
23 shape or size, either ss, st, or tt, and present
24 in both lower lung zones, or asbestosis deter-
25 mined by pathology, or diffuse pleural thick-

1 ening, or bilateral pleural disease of B2 or
2 greater;

3 (B) evidence of TLC less than 80 percent,
4 FVC less than the lower limits of normal and
5 FEV1/FVC ratio greater than or equal to 65
6 percent, or evidence of a decline in FVC of 20
7 percent or greater, after allowing for the ex-
8 pected decrease due to aging, and an FEV1/
9 FVC ratio greater than or equal to 65 percent
10 documented with a second spirometry;

11 (C) evidence of 5 or more weighted years
12 of substantial occupational exposure to asbes-
13 tos; and

14 (D) supporting medical documentation—

15 (i) establishing asbestos exposure as a
16 contributing factor in causing the pul-
17 monary condition in question; and

18 (ii) excluding other more likely causes
19 of that pulmonary condition.

20 (4) NONMALIGNANT LEVEL IV.—To receive
21 Level IV compensation a claimant shall provide—

22 (A) diagnosis of bilateral asbestos-related
23 nonmalignant disease with ILO grade of 1/1 or
24 greater and showing small irregular opacities of
25 shape or size, either ss, st, or tt, and present

1 in both lower lung zones, or asbestosis deter-
2 mined by pathology, or diffuse pleural thick-
3 ening, or bilateral pleural disease of B2 or
4 greater;

5 (B) evidence of TLC less than 60 percent
6 or FVC less than 60 percent, and FEV1/FVC
7 ratio greater than or equal to 65 percent;

8 (C) evidence of 5 or more weighted years
9 of substantial occupational exposure to asbestos
10 before diagnosis; and

11 (D) supporting medical documentation—

12 (i) establishing asbestos exposure as a
13 contributing factor in causing the pul-
14 monary condition in question; and

15 (ii) excluding other more likely causes
16 of that pulmonary condition.

17 (5) NONMALIGNANT LEVEL V.—To receive
18 Level V compensation a claimant shall provide—

19 (A) diagnosis of bilateral asbestos-related
20 nonmalignant disease with ILO grade of 1/1 or
21 greater and showing small irregular opacities of
22 shape or size, either ss, st, or tt, and present
23 in both lower lung zones, or asbestosis deter-
24 mined by pathology, or diffuse pleural thick-

1 ening, or bilateral pleural disease of B2 or
2 greater;

3 (B)(i) evidence of TLC less than 50 per-
4 cent or FVC less than 50 percent, and FEV1/
5 FVC ratio greater than or equal to 65 percent;

6 (ii) DLCO less than 40 percent of pre-
7 dicted, plus a FEV1/FVC ratio not less than 65
8 percent; or

9 (iii) PO2 less than 55 mm/Hg, plus a
10 FEV1/FVC ratio not less than 65 percent;

11 (C) evidence of 5 or more weighted years
12 of substantial occupational exposure to asbes-
13 tos; and

14 (D) supporting medical documentation—

15 (i) establishing asbestos exposure as a
16 contributing factor in causing the pul-
17 monary condition in question; and

18 (ii) excluding other more likely causes
19 of that pulmonary condition.

20 (6) MALIGNANT LEVEL VI.—

21 (A) IN GENERAL.—To receive Level VI
22 compensation a claimant shall provide—

23 (i) a diagnosis of a primary colorectal,
24 laryngeal, esophageal, pharyngeal, or stom-

1 ach cancer on the basis of findings by a
2 board certified pathologist;

3 (ii) evidence of a bilateral asbestos-re-
4 lated nonmalignant disease;

5 (iii) evidence of 15 or more weighted
6 years of substantial occupational exposure
7 to asbestos; and

8 (iv) supporting medical documentation
9 establishing asbestos exposure as a contrib-
10 uting factor in causing the cancer in ques-
11 tion.

12 (B) REFERRAL TO PHYSICIANS PANEL.—

13 All claims filed with respect to Level VI under
14 this paragraph shall be referred to a Physicians
15 Panel for a determination that it is more prob-
16 able than not that asbestos exposure was a sub-
17 stantial contributing factor in causing the other
18 cancer in question. If the claimant meets the
19 requirements of subparagraph (A), there shall
20 be a presumption of eligibility for the scheduled
21 value of compensation unless there is evidence
22 determined by the Physicians Panel that rebuts
23 that presumption.

24 (C) REQUEST FOR REFERRAL TO PHYSI-
25 CIANS PANEL.—A claimant filing a claim with

1 respect to Level VI under this paragraph may
2 request that the claim be referred to a Physi-
3 cians Panel for a determination on amount of
4 award. In making its determination under this
5 subparagraph, the Physicians Panel shall con-
6 sider the intensity and duration of exposure,
7 smoking history, and the quality of evidence re-
8 lating to exposure and smoking. Claimants shall
9 bear the burden of producing meaningful and
10 credible evidence of their smoking history as
11 part of their claim submission.

12 (7) MALIGNANT LEVEL VII.—

13 (A) IN GENERAL.—To receive Level VII
14 compensation a claimant shall provide—

15 (i) a diagnosis of a primary lung can-
16 cer disease on the basis of findings by a
17 board certified pathologist;

18 (ii) evidence of 15 or more weighted
19 years of substantial occupational exposure
20 to asbestos; and

21 (iii) supporting medical documenta-
22 tion establishing asbestos exposure as a
23 contributing factor in causing the lung
24 cancer in question.

1 (B) PHYSICIANS PANEL.—All claims filed
2 relating to Level VII under this paragraph shall
3 be referred to a Physicians Panel for a deter-
4 mination on the amount of award. In making
5 its determination under this subparagraph, the
6 Physicians Panel shall consider the intensity
7 and duration of exposure, smoking history, and
8 the quality of evidence relating to exposure and
9 smoking. Claimants shall bear the burden of
10 producing meaningful and credible evidence of
11 their smoking history as part of their claim
12 submission.

13 (8) MALIGNANT LEVEL VIII.—

14 (A) IN GENERAL.—To receive Level VIII
15 compensation, a claimant shall provide—

16 (i) a diagnosis of a primary lung can-
17 cer disease on the basis of findings by a
18 board certified pathologist;

19 (ii) evidence of bilateral pleural
20 plaques or bilateral pleural thickening or
21 bilateral pleural calcification;

22 (iii) evidence of 12 or more weighted
23 years of substantial occupational exposure
24 to asbestos; and

1 (iv) supporting medical documentation
2 establishing asbestos exposure as a contrib-
3 uting factor in causing the lung cancer in
4 question.

5 (B) PHYSICIANS PANEL.—A claimant filing
6 a claim relating to Level VIII under this para-
7 graph may request that the claim be referred to
8 a Physicians Panel for a determination on
9 amount of award. In making its determination
10 under this subparagraph, the Physicians Panel
11 shall consider the intensity and duration of ex-
12 posure, smoking history, and the quality of evi-
13 dence relating to exposure and smoking. Claim-
14 ants shall bear the burden of producing mean-
15 ingful and credible evidence of their smoking
16 history as part of their claim submission.

17 (9) MALIGNANT LEVEL IX.—

18 (A) IN GENERAL.—To receive Level IX
19 compensation, a claimant shall provide—

20 (i) a diagnosis of a primary lung can-
21 cer disease on the basis of findings by a
22 board certified pathologist;

23 (ii)(I) evidence of—

24 (aa) asbestosis based on a chest
25 x-ray of at least 1/0 on the ILO scale

1 and showing small irregular opacities
2 of shape or size, either ss, st, or tt,
3 and present in both lower lung zones;
4 and

5 (bb) 10 or more weighted years
6 of substantial occupational exposure
7 to asbestos;

8 (II) evidence of—

9 (aa) asbestosis based on a chest
10 x-ray of at least 1/1 on the ILO scale
11 and showing small irregular opacities
12 of shape or size, either ss, st, or tt,
13 and present in both lower lung zones;
14 and

15 (bb) 8 or more weighted years of
16 substantial occupational exposure to
17 asbestos; or

18 (III) asbestosis determined by pathol-
19 ogy and 10 or more weighted years of sub-
20 stantial occupational exposure to asbestos;
21 and

22 (iii) supporting medical documenta-
23 tion establishing asbestos exposure as a
24 contributing factor in causing the lung
25 cancer in question.

1 (B) PHYSICIANS PANEL.—A claimant filing
2 a claim with respect to Level IX under this
3 paragraph may request that the claim be re-
4 ferred to a Physicians Panel for a determina-
5 tion on amount of award. In making its deter-
6 mination under this subparagraph, the Physi-
7 cians Panel shall consider the intensity and du-
8 ration of exposure, smoking history, and the
9 quality of evidence relating to exposure and
10 smoking. Claimants shall bear the burden of
11 producing meaningful and credible evidence of
12 their smoking history as part of their claim
13 submission.

14 (10) MALIGNANT LEVEL X.—To receive Level
15 X compensation, a claimant shall provide—

16 (A) a diagnosis of malignant mesothelioma
17 disease on the basis of findings by a board cer-
18 tified pathologist; and

19 (B) credible evidence of identifiable expo-
20 sure to asbestos resulting from—

21 (i) occupational exposure to asbestos;

22 (ii) exposure to asbestos fibers
23 brought into the home of the claimant by
24 a worker occupationally exposed to asbes-
25 tos;

1 (iii) exposure to asbestos fibers result-
2 ing from living or working in the proxi-
3 mate vicinity of a factory, shipyard, build-
4 ing demolition site, or other operation that
5 regularly released asbestos fibers into the
6 air due to operations involving asbestos at
7 that site; or

8 (iv) other identifiable exposure to as-
9 bestos fibers, in which case the claim shall
10 be reviewed by a Physicians Panel under
11 section 121(f) for a determination of eligi-
12 bility.

13 (e) INSTITUTE OF MEDICINE STUDY.—

14 (1) IN GENERAL.—Not later than 2 years after
15 date of enactment of this Act, the Institute of Medi-
16 cine of the National Academy of Sciences shall com-
17 plete a study of the causal link between asbestos ex-
18 posure and other cancers, including colorectal, laryn-
19 geal, esophageal, pharyngeal, and stomach cancers,
20 except for mesothelioma and lung cancers. The In-
21 stitute of Medicine shall issue a report on its find-
22 ings on causation, which shall be transmitted to
23 Congress, the Administrator, the Advisory Com-
24 mittee on Asbestos Disease Compensation or the
25 Medical Advisory Committee, and the Physicians

1 Panels. The Administrator and the Physicians Pan-
2 els may consider the results of the report for pur-
3 poses of determining whether asbestos exposure is a
4 substantial contributing factor under section
5 121(d)(6)(B).

6 (2) SUBSEQUENT STUDIES.—If the Adminis-
7 trator has evidence that there have been advance-
8 ments in science that would require additional study,
9 the Administrator may request that the Institute of
10 Medicine conduct a subsequent study to determine if
11 asbestos exposure is a cause of other cancers.

12 (f) EXCEPTIONAL MEDICAL CLAIMS.—

13 (1) IN GENERAL.—A claimant who does not
14 meet the medical criteria requirements under this
15 section may apply for designation of the claim as an
16 exceptional medical claim.

17 (2) APPLICATION.—When submitting an appli-
18 cation for review of an exceptional medical claim, the
19 claimant shall—

20 (A) state that the claim does not meet the
21 medical criteria requirements under this sec-
22 tion; or

23 (B) seek designation as an exceptional
24 medical claim within 60 days after a determina-
25 tion that the claim is ineligible solely for failure

1 to meet the medical criteria requirements under
2 subsection (d).

3 (3) REPORT OF PHYSICIAN.—

4 (A) IN GENERAL.—Any claimant applying
5 for designation of a claim as an exceptional
6 medical claim shall support an application filed
7 under paragraph (1) with a report from a phy-
8 sician meeting the requirements of this section.

9 (B) CONTENTS.—A report filed under sub-
10 paragraph (A) shall include—

11 (i) a complete review of the claimant's
12 medical history and current condition;

13 (ii) such additional material by way of
14 analysis and documentation as shall be
15 prescribed by rule of the Administrator;
16 and

17 (iii) a detailed explanation as to why
18 the claim meets the requirements of para-
19 graph (4)(B).

20 (4) REVIEW.—

21 (A) IN GENERAL.—The Administrator
22 shall refer all applications and supporting docu-
23 mentation submitted under paragraph (2) to a
24 Physicians Panel for review for eligibility as an
25 exceptional medical claim.

1 (B) STANDARD.—A claim shall be des-
2 ignated as an exceptional medical claim if the
3 claimant, for reasons beyond the control of the
4 claimant, cannot satisfy the requirements under
5 this section, but is able, through comparably re-
6 liable evidence that meets the standards under
7 this section, to show that the claimant has an
8 asbestos-related condition that is substantially
9 comparable to that of a medical condition that
10 would satisfy the requirements of a category
11 under this section.

12 (C) ADDITIONAL INFORMATION.—A Physi-
13 cians Panel may request additional reasonable
14 testing to support the claimant's application.

15 (D) CT SCAN.—A claimant may submit a
16 CT Scan in addition to an x-ray.

17 (5) APPROVAL.—

18 (A) IN GENERAL.—If the Physicians Panel
19 determines that the medical evidence is suffi-
20 cient to show a comparable asbestos-related
21 condition, it shall issue a certificate of medical
22 eligibility designating the category of asbestos-
23 related injury under this section for which the
24 claimant shall be eligible to seek compensation.

1 (B) REFERRAL.—Upon the issuance of a
2 certificate under subparagraph (A), the Physi-
3 cians Panel shall submit the claim to the Ad-
4 ministrator, who shall give due consideration to
5 the recommendation of the Physicians Panel in
6 determining whether the claimant meets the re-
7 quirements for compensation under this Act.

8 (6) RESUBMISSION.—Any claimant whose appli-
9 cation for designation as an exceptional medical
10 claim is rejected may resubmit an application if new
11 evidence becomes available. The application shall
12 identify any prior applications and state the new evi-
13 dence that forms the basis of the resubmission.

14 (7) RULES.—The Administrator shall promul-
15 gate rules governing the procedures for seeking des-
16 ignation of a claim as an exceptional medical claim.

17 (8) LIBBY, MONTANA.—A Libby, Montana
18 claimant may elect to have the claimant's claims
19 designated as exceptional medical claims and re-
20 ferred to a Physicians Panel for review. In reviewing
21 the medical evidence submitted by a Libby, Montana
22 claimant in support of that claim, the Physicians
23 Panel shall take into consideration the unique and
24 serious nature of asbestos exposure in Libby, Mon-

1 tana, including the nature of the pleural disease re-
 2 lated to asbestos exposure in Libby.

3 **Subtitle D—Awards**

4 **SEC. 131. AMOUNT.**

5 (a) IN GENERAL.—An asbestos claimant who meets
 6 the requirements of section 111 shall be entitled to an
 7 award in an amount determined by reference to the benefit
 8 table and the matrices developed under subsection (b).

9 (b) BENEFIT TABLE.—

10 (1) IN GENERAL.—An asbestos claimant with
 11 an eligible disease or condition established in accord-
 12 ance with section 121 shall be eligible for an award
 13 as determined under this subsection. The award for
 14 all asbestos claimants with an eligible disease or con-
 15 dition established in accordance with section 121
 16 shall be according to the following schedule:

Level	Scheduled Condi- tion or Disease	Scheduled Value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	\$35,000
III	Asbestosis/Pleural Disease B	\$100,000
IV	Severe Asbestosis	\$400,000
V	Disabling Asbestosis	\$850,000
VI	Other Cancer	\$200,000
VII	Lung Cancer One	individual evaluation; smokers, \$75,000; ex-smokers, \$200,000; non-smokers, \$625,000
VIII	Lung Cancer With Pleural Disease	smokers, \$275,000; ex-smokers, \$700,000; non-smokers, \$800,000

IX	Lung Cancer With Asbestosis	smokers, \$575,000; ex-smokers, \$950,000; non-smokers, \$1,075,000
X	Mesothelioma	\$1,075,000

1 (2) DEFINITIONS.—In this section—

2 (A) the term “nonsmoker” means a claim-
3 ant who never smoked; and

4 (B) the term “ex-smoker” means a claim-
5 ant who has not smoked during any portion of
6 the 12-year period preceding the diagnosis of
7 lung cancer.

8 (3) REVIEW AND AWARD.—Level VII cancers
9 shall be individually reviewed for eligibility, and
10 awards shall be in accordance with the schedule set
11 forth in paragraph (1).

12 (4) SPECIAL ADJUSTMENT FOR FELA CASES.—

13 (A) IN GENERAL.—A claimant who filed a
14 timely asbestos claim under the Act of April 22,
15 1908 (45 U.S.C. 51 et seq.), commonly known
16 as the Employers’ Liability Act, before the date
17 of enactment of this Act, or who would be eligi-
18 ble to bring such a claim but for section 403 of
19 this Act, may be eligible for a special adjust-
20 ment under this paragraph.

21 (B) REGULATIONS.—The Administrator
22 shall promulgate regulations relating to special
23 adjustments under this paragraph, including

1 regulations establishing eligibility requirements
2 and the procedures to be used in applying for
3 a special adjustment and establishing time lim-
4 its for administrative actions under this para-
5 graph.

6 (C) ELIGIBILITY.—To be eligible for a spe-
7 cial adjustment, the claimant shall apply for
8 such an adjustment and demonstrate to the Ad-
9 ministrator’s satisfaction that—

10 (i) the claimant’s asbestos-related con-
11 dition was the result of occupational expo-
12 sure to asbestos in the course of the claim-
13 ant’s employment by a common carrier by
14 rail;

15 (ii) the claimant qualifies for an
16 award under this section for disease Levels
17 II through X;

18 (iii) the claimant has a total or partial
19 disability as a result of the claimant’s as-
20 bestos-related condition under the workers’
21 compensation law that would apply if the
22 claimant’s occupational exposure had oc-
23 curred outside the railroad industry; and

24 (iv) after taking into consideration
25 any benefits that the claimant has re-

1 received, or is entitled to receive, for occupa-
2 tional disability under the Railroad Retire-
3 ment Act (45 U.S.C. 201 et seq.) and any
4 applicable workers' compensation law, the
5 claimant's total compensation after receiv-
6 ing an award under this section would be
7 less than the amount that would be re-
8 ceived by a similarly situated claimant
9 who—

10 (I) did not work in the railroad
11 industry; and

12 (II) did work in an industry cov-
13 ered by applicable workers' compensa-
14 tion laws.

15 (D) AMOUNT.—A special adjustment under
16 this paragraph shall be the difference
17 between—

18 (i) the claimant's total compensation
19 after receiving an award under this sec-
20 tion, as determined under subparagraph
21 (C)(iv); and

22 (ii) the amount that would be received
23 by a similarly situated claimant who—

24 (I) did not work in the railroad
25 industry;

1 (II) did work in an industry cov-
2 ered by applicable workers' compensa-
3 tion laws; and

4 (III) filed an application for ben-
5 efits as of the date that the claimant
6 commenced an action under the Act of
7 April 22, 1908 (45 U.S.C. 51 et seq.),
8 commonly known as the Employers'
9 Liability Act, or applied for an award
10 under this Act, whichever is earlier.

11 (E) EXCEPTION.—Nothing in this Act
12 should in any manner be construed to impact or
13 affect the Act of April 22, 1908 (45 U.S.C. 51
14 et seq.), commonly known as the Employers'
15 Liability Act. This Act is intended to deal solely
16 with asbestos claims and not with any other
17 rights possessed by an employee of the railroad
18 industry.

19 (5) MEDICAL MONITORING.—An asbestos claim-
20 ant with asymptomatic exposure, based on the cri-
21 teria under section 121(d)(1), shall only be eligible
22 for medical monitoring reimbursement as provided
23 under section 132.

24 (6) COST-OF-LIVING ADJUSTMENT.—

1 (A) IN GENERAL.—Beginning January 1,
2 2007, award amounts under paragraph (1)
3 shall be annually increased by an amount equal
4 to such dollar amount multiplied by the cost-of-
5 living adjustment, rounded to the nearest
6 \$1,000 increment.

7 (B) CALCULATION OF COST-OF-LIVING AD-
8 JUSTMENT.—For the purposes of subparagraph
9 (A), the cost-of-living adjustment for any cal-
10 endar year shall be the percentage, if any, by
11 which the consumer price index for the suc-
12 ceeding calendar year exceeds the consumer
13 price index for calendar year 2005.

14 (C) CONSUMER PRICE INDEX.—

15 (i) IN GENERAL.—For the purposes of
16 subparagraph (B), the consumer price
17 index for any calendar year is the average
18 of the consumer price index as of the close
19 of the 12-month period ending on August
20 31 of such calendar year.

21 (ii) DEFINITION.—For purposes of
22 clause (i), the term “consumer price
23 index” means the consumer price index
24 published by the Department of Labor.
25 The consumer price index series to be used

1 for award escalations shall include the con-
2 sumer price index used for all-urban con-
3 sumers, with an area coverage of the
4 United States city average, for all items,
5 based on the 1982–1984 index based pe-
6 riod, as published by the Department of
7 Labor.

8 **SEC. 132. MEDICAL MONITORING.**

9 (a) RELATION TO STATUTE OF LIMITATIONS.—The
10 filing of a claim under this Act that seeks reimbursement
11 for medical monitoring shall not be considered as evidence
12 that the claimant has discovered facts that would other-
13 wise commence the period applicable for purposes of the
14 statute of limitations under section 113(b).

15 (b) COSTS.—Reimbursable medical monitoring costs
16 shall include the costs of a claimant not covered by health
17 insurance for an examination by the claimant’s physician,
18 x-ray tests, and pulmonary function tests every 3 years.

19 (c) REGULATIONS.—The Administrator shall promul-
20 gate regulations that establish—

21 (1) the reasonable costs for medical monitoring
22 that is reimbursable; and

23 (2) the procedures applicable to asbestos claim-
24 ants.

1 **SEC. 133. PAYMENT.**

2 (a) STRUCTURED PAYMENTS.—

3 (1) IN GENERAL.—An asbestos claimant who is
4 entitled to an award should receive the amount of
5 the award through structured payments from the
6 Fund, made over a period of 3 years, and in no
7 event more than 4 years after the date of final adju-
8 dication of the claim.

9 (2) PAYMENT PERIOD AND AMOUNT.—There
10 shall be a presumption that any award paid under
11 this subsection shall provide for payment of—

12 (A) 40 percent of the total amount in year

13 1;

14 (B) 30 percent of the total amount in year

15 2; and

16 (C) 30 percent of the total amount in year

17 3.

18 (3) EXTENSION OF PAYMENT PERIOD.—

19 (A) IN GENERAL.—The Administrator
20 shall develop guidelines to provide for the pay-
21 ment period of an award under subsection (a)
22 to be extended to a 4-year period if such action
23 is warranted in order to preserve the overall sol-
24 vency of the Fund. Such guidelines shall include
25 reference to the number of claims made to the
26 Fund and the awards made and scheduled to be

1 paid from the Fund as provided under section
2 405.

3 (B) LIMITATIONS.—In no event shall less
4 than 50 percent of an award be paid in the first
5 2 years of the payment period under this sub-
6 section.

7 (4) ACCELERATED PAYMENTS.—The Adminis-
8 trator shall develop guidelines to provide for acceler-
9 ated payments to asbestos claimants who are meso-
10 thelioma victims and who are alive on the date on
11 which the Administrator receives notice of the eligi-
12 bility of the claimant. Such payments shall be cred-
13 ited against the first regular payment under the
14 structured payment plan for the claimant.

15 (5) EXPEDITED PAYMENTS.—The Adminis-
16 trator shall develop guidelines to provide for expe-
17 dited payments to asbestos claimants in cases of exi-
18 gent circumstances or extreme hardship caused by
19 asbestos-related injury.

20 (6) ANNUITY.—An asbestos claimant may elect
21 to receive any payments to which they are entitled
22 under this title in the form of an annuity.

23 (b) LIMITATION ON TRANSFERABILITY.—A claim
24 filed under this Act shall not be assignable or otherwise
25 transferable under this Act.

1 (c) CREDITORS.—An award under this title shall be
2 exempt from all claims of creditors and from levy, execu-
3 tion, and attachment or other remedy for recovery or col-
4 lection of a debt, and such exemption may not be waived.

5 (d) MEDICARE AS SECONDARY PAYER.—No award
6 under this title shall be deemed a payment for purposes
7 of section 1862 of the Social Security Act (42 U.S.C.
8 1395y).

9 (e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S
10 BANKRUPTCY CASE.—If an asbestos claimant files a peti-
11 tion for relief under section 301 of title 11, United States
12 Code, no award granted under this Act shall be treated
13 as property of the bankruptcy estate of the asbestos claim-
14 ant in accordance with section 541(b)(6) of title 11,
15 United States Code.

16 **SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLAT-**
17 **ERAL SOURCES.**

18 (a) IN GENERAL.—The amount of an award other-
19 wise available to an asbestos claimant under this title shall
20 be reduced by the amount of collateral source compensa-
21 tion.

22 (b) EXCLUSIONS.—In no case shall statutory benefits
23 under workers' compensation laws and veterans' benefits
24 programs be deemed as collateral source compensation for
25 purposes of this section.

1 **SEC. 135. STATE LIEN LAWS.**

2 (a) IN GENERAL.—Any award of compensation under
3 this Act shall be deemed a third-party judgment or settle-
4 ment for purposes of any State or Federal workers' com-
5 pensation lien law.

6 (b) WORKERS' COMPENSATION.—

7 (1) BENEFITS BEFORE ENACTMENT.—To the
8 extent any workers' compensation insurer, self-in-
9 sured employer, or Federal workers' compensation
10 administrator elects to assert any State statutory
11 lien rights against any award of compensation under
12 this Act, it may not seek recovery from any awards
13 made to a claimant by the Fund for any workers'
14 compensation benefits paid before the date of enact-
15 ment of this Act.

16 (2) BENEFITS ON OR AFTER ENACTMENT.—

17 (A) IN GENERAL.—Upon acceptance or
18 compromise of a workers' compensation claim
19 first made after the date of enactment of this
20 Act, or for any claim accepted or compromised
21 before the date of enactment of this Act where
22 future workers' compensation payments are due
23 to be paid on or after such date, a workers'
24 compensation insurer or self-insured employer's
25 obligation to make any further payments shall
26 not arise until such amount further due and

1 owing exceeds the total amount of the award
2 paid to the claimant.

3 (B) ANNUAL AMOUNTS.—In the event the
4 annual workers' compensation benefits further
5 due and owing exceed the annual amount of the
6 award paid to the claimant from the Fund,
7 then the workers' compensation insurer or self-
8 insured employer shall be obligated to pay the
9 claimant the difference between such annual
10 workers' compensation benefit and the annual
11 Fund payment.

12 (C) OTHER RULES.—No workers' com-
13 pensation insurer or self-insured employer shall
14 seek recovery from any such award paid to the
15 claimant by the Fund. This subsection explicitly
16 preempts any Federal or State workers' com-
17 pensation lien law that is inconsistent with this
18 subsection.

19 **TITLE II—ASBESTOS INJURY**
20 **CLAIMS RESOLUTION FUND**
21 **Subtitle A—Asbestos Defendants**
22 **Funding Allocation**

23 **SEC. 201. DEFINITIONS.**

24 In this subtitle, the following definitions shall apply:

1 (1) **AFFILIATED GROUP.**—The term “affiliated
2 group”—

3 (A) means a defendant participant that is
4 an ultimate parent and any person whose entire
5 beneficial interest is directly or indirectly owned
6 by that ultimate parent on the date of enact-
7 ment of this Act; and

8 (B) shall not include any person that is a
9 debtor or any direct or indirect majority-owned
10 subsidiary of a debtor.

11 (2) **CLASS ACTION TRUST.**—The term “class ac-
12 tion trust” means a trust or similar entity estab-
13 lished to hold assets for the payment of asbestos
14 claims asserted against a debtor or participating de-
15 fendant, under a settlement that—

16 (A) is a settlement of class action claims
17 under rule 23 of the Federal Rules of Civil Pro-
18 cedure; and

19 (B) has been approved by a final judgment
20 of a United States district court before the date
21 of enactment of this Act.

22 (3) **DEBTOR.**—The term “debtor”—

23 (A) means—

24 (i) a person that is subject to a case
25 pending under a chapter of title 11, United

1 States Code, on the date of enactment of
2 this Act or at any time during the 1-year
3 period immediately preceding that date, ir-
4 respective of whether the debtor's case
5 under that title has been dismissed; and

6 (ii) all of the direct or indirect major-
7 ity-owned subsidiaries of a person de-
8 scribed under clause (i), regardless of
9 whether any such majority-owned sub-
10 sidiary has a case pending under title 11,
11 United States Code; and

12 (B) shall not include an entity—

13 (i) subject to chapter 7 of title 11,
14 United States Code, if a final decree clos-
15 ing the estate shall have been entered be-
16 fore the date of enactment of this Act; or

17 (ii) subject to chapter 11 of title 11,
18 United States Code, if a plan of reorga-
19 nization for such entity shall have been
20 confirmed by a duly entered order or judg-
21 ment of a court that is no longer subject
22 to any appeal or judicial review, and the
23 substantial consummation, as such term is
24 defined in section 1101(2) of title 11,

1 United States Code, of such plan of reor-
2 ganization has occurred.

3 (4) INDEMNIFIABLE COST.—The term
4 “indemnifiable cost” means a cost, expense, debt,
5 judgment, or settlement incurred with respect to an
6 asbestos claim that, at any time before December
7 31, 2002, was or could have been subject to indem-
8 nification, contribution, surety, or guaranty.

9 (5) INDEMNITEE.—The term “indemnitee”
10 means a person against whom any asbestos claim
11 has been asserted before December 31, 2002, who
12 has received from any other person, or on whose be-
13 half a sum has been paid by such other person to
14 any third person, in settlement, judgment, defense,
15 or indemnity in connection with an alleged duty with
16 respect to the defense or indemnification of such
17 person concerning that asbestos claim, other than
18 under a policy of insurance or reinsurance.

19 (6) INDEMNITOR.—The term “indemnitor”
20 means a person who has paid under a written agree-
21 ment at any time before December 31, 2002, a sum
22 in settlement, judgment, defense, or indemnity to or
23 on behalf of any person defending against an asbes-
24 tos claim, in connection with an alleged duty with
25 respect to the defense or indemnification of such

1 person concerning that asbestos claim, except that
2 payments by an insurer or reinsurer under a con-
3 tract of insurance or reinsurance shall not make the
4 insurer or reinsurer an indemnitor for purposes of
5 this subtitle.

6 (7) PRIOR ASBESTOS EXPENDITURES.—The
7 term “prior asbestos expenditures”—

8 (A) means the gross total amount paid by
9 or on behalf of a person at any time before De-
10 cember 31, 2002, in settlement, judgment, de-
11 fense, or indemnity costs related to all asbestos
12 claims against that person;

13 (B) includes payments made by insurance
14 carriers to or for the benefit of such person or
15 on such person’s behalf with respect to such as-
16 bestos claims, except as provided in section
17 204(g);

18 (C) shall not include any payment made by
19 a person in connection with or as a result of
20 changes in insurance reserves required by con-
21 tract or any activity or dispute related to insur-
22 ance coverage matters for asbestos-related li-
23 abilities; and

24 (D) shall not include any payment made by
25 or on behalf of persons who are or were com-

1 mon carriers by railroad for asbestos claims
2 brought under the Act of April 22, 1908 (45
3 U.S.C. 51 et seq.), commonly known as the
4 Employers' Liability Act, as a result of oper-
5 ations as a common carrier by railroad, includ-
6 ing settlement, judgment, defense, or indemnity
7 costs associated with these claims.

8 (8) TRUST.—The term “trust” means any
9 trust, as described in sections 524(g)(2)(B)(i) or
10 524(h) of title 11, United States Code, or estab-
11 lished in conjunction with an order issued under sec-
12 tion 105 of title 11, United States Code, established
13 or formed under the terms of a chapter 11 plan of
14 reorganization, which in whole or in part provides
15 compensation for asbestos claims.

16 (9) ULTIMATE PARENT.—The term “ultimate
17 parent” means a person—

18 (A) that owned, as of December 31, 2002,
19 the entire beneficial interest, directly or indi-
20 rectly, of at least 1 other person; and

21 (B) whose entire beneficial interest was not
22 owned, on December 31, 2002, directly or indi-
23 rectly, by any other single person (other than a
24 natural person).

1 **SEC. 202. AUTHORITY AND TIERS.**

2 (a) LIABILITY FOR PAYMENTS TO THE FUND.—

3 (1) IN GENERAL.—Defendant participants shall
4 be liable for payments to the Fund in accordance
5 with this section based on tiers and subtiers as-
6 signed to defendant participants.

7 (2) AGGREGATE PAYMENT OBLIGATIONS
8 LEVEL.—The total payments required of all defend-
9 ant participants over the life of the Fund shall not
10 exceed **[To be supplied]**. The Administrator shall
11 have the authority to allocate the payments required
12 of the defendant participants among the tiers as
13 provided in this title.

14 (3) ABILITY TO ENTER REORGANIZATION.—
15 Notwithstanding any other provision of this Act, all
16 debtors that, together with all of their direct or indi-
17 rect majority-owned subsidiaries, have prior asbestos
18 expenditures less than \$1,000,000 may proceed with
19 the filing, solicitation, and confirmation of a plan of
20 reorganization that does not comply with the re-
21 quirements of this Act, including a trust and chan-
22 neling injunction under section 524(g) of title 11,
23 United States Code. Any asbestos claim made in
24 conjunction with a plan of reorganization allowable
25 under the preceding sentence shall be subject to sec-
26 tion 403(d) of this Act.

1 (b) TIER I.—Tier I shall include all debtors that, to-
2 gether with all of their direct or indirect majority-owned
3 subsidiaries, have prior asbestos expenditures greater than
4 \$1,000,000.

5 (c) TREATMENT OF TIER I BUSINESS ENTITIES IN
6 BANKRUPTCY.—

7 (1) DEFINITION.—

8 (A) IN GENERAL.—In this subsection, the
9 term “bankrupt business entity” means a per-
10 son that is not a natural person that—

11 (i) filed a petition for relief under
12 chapter 11, of title 11, United States
13 Code, before January 1, 2003;

14 (ii) has not confirmed a plan of reor-
15 ganization as of the date of enactment of
16 this Act; and

17 (iii) the bankruptcy court presiding
18 over the business entity’s case determines,
19 after notice and a hearing upon motion
20 filed by the entity within 30 days of the ef-
21 fective date of this Act, that asbestos li-
22 ability was not the sole or precipitating
23 cause of the entity’s chapter 11 filing.

1 (B) MOTION AND RELATED MATTERS.—A
2 motion under subparagraph (A)(iii) shall be
3 supported by—

4 (i) an affidavit or declaration of the
5 chief executive officer, chief financial offi-
6 cer, or chief legal officer of the business
7 entity; and

8 (ii) copies of the entity's public state-
9 ments and securities filings made in con-
10 nection with the entity's filing for chapter
11 11 protection.

12 Notice of such motion shall be as directed by
13 the bankruptcy court, and the hearing shall be
14 limited to consideration of the question of
15 whether or not asbestos liability was the sole or
16 precipitating cause of the entity's chapter 11
17 filing. The bankruptcy court shall hold a hear-
18 ing and make its determination with respect to
19 the motion within 60 days after the date the
20 motion is filed. In making its determination,
21 the bankruptcy court shall take into account
22 the affidavits, public statements, and securities
23 filings, and other information, if any, submitted
24 by the entity and all other facts and cir-
25 cumstances presented by an objecting party.

1 Any review of this determination must be an ex-
2 pedited appeal and limited to whether the deci-
3 sion was against the weight of the evidence.
4 Any appeal of a determination shall be an expe-
5 dited review under section 303.

6 (2) PROCEEDING WITH REORGANIZATION
7 PLAN.—A bankrupt business entity may proceed
8 with the filing, solicitation, and confirmation of a
9 plan of reorganization that does not comply with the
10 requirements of this Act, including a trust and chan-
11 neling injunction described in section 524(g) of title
12 11, United States Code, notwithstanding any other
13 provisions of this Act, if—

14 (A) on request of a party in interest or on
15 a motion of the court, and after a notice and
16 a hearing, the bankruptcy court presiding over
17 the chapter 11 case of the bankrupt business
18 entity determines that—

19 (i) confirmation is necessary to permit
20 the reorganization of that entity and as-
21 sure that all creditors and that entity are
22 treated fairly and equitably; and

23 (ii) confirmation is clearly favored by
24 the balance of the equities; and

1 (B) an order confirming the plan of reor-
2 ganization is entered by the bankruptcy court
3 within 9 months after the date of enactment of
4 this Act or such longer period of time approved
5 by the bankruptcy court for cause shown.

6 (3) APPLICABILITY.—If the bankruptcy court
7 does not make the required determination, or if an
8 order confirming the plan is not entered within 9
9 months after the effective date of this Act or such
10 longer period of time approved by the bankruptcy
11 court for cause shown, the provisions of this Act
12 shall apply to the bankrupt business entity notwith-
13 standing the certification. Any timely appeal under
14 title 11, United States Code, from a confirmation
15 order entered during the applicable time period shall
16 automatically extend the time during which this Act
17 is inapplicable to the bankrupt business entity, until
18 the appeal is fully and finally resolved.

19 (4) OFFSETS.—

20 (A) PAYMENTS BY INSURERS.—To the ex-
21 tent that a bankrupt business entity or debtor
22 successfully confirms a plan of reorganization,
23 including a trust, and channeling injunction
24 that involves payments by insurers who are oth-
25 erwise subject to this Act as described in sec-

1 tion 524(g) of title 11, United States Code, an
2 insurer who makes payments to the trust shall
3 obtain a dollar-for-dollar reduction in the
4 amount otherwise payable by that insurer under
5 this Act to the Fund.

6 (B) CONTRIBUTIONS TO FUND.—Any cash
7 payments by a bankrupt business entity, if any,
8 to a trust described in section 524(g) of title
9 11, United States Code, may be counted as a
10 contribution to the Fund.

11 (d) TIERS II THROUGH VI.—Except as provided in
12 section 204 and subsection (b) of this section, persons or
13 affiliated groups are included in Tier II, III, IV, V, or
14 VI, according to the prior asbestos expenditures paid by
15 such persons or affiliated groups as follows:

16 (1) Tier II: \$75,000,000 or greater.

17 (2) Tier III: \$50,000,000 or greater, but less
18 than \$75,000,000.

19 (3) Tier IV: \$10,000,000 or greater, but less
20 than \$50,000,000.

21 (4) Tier V: \$5,000,000 or greater, but less than
22 \$10,000,000.

23 (5) Tier VI: \$1,000,000 or greater, but less
24 than \$5,000,000.

25 (e) TIER PLACEMENT AND COSTS.—

1 (1) PERMANENT TIER PLACEMENT.—After a
2 defendant participant or affiliated group is assigned
3 to a tier and subtier under section 204(i)(6), the
4 participant or affiliated group shall remain in that
5 tier and subtier throughout the life of the Fund, re-
6 gardless of subsequent events, including—

7 (A) the filing of a petition under a chapter
8 of title 11, United States Code;

9 (B) a discharge of debt in bankruptcy;

10 (C) the confirmation of a plan of reorga-
11 nization; or

12 (D) the sale or transfer of assets to any
13 other person or affiliated group, unless the Ad-
14 ministrators find that the information sub-
15 mitted by the participant or affiliated group to
16 support its inclusion in that tier was inaccurate.

17 (2) COSTS.—Payments to the Fund by all per-
18 sons that are the subject of a case under a chapter
19 of title 11, United States Code, after the date of en-
20 actment of this Act—

21 (A) shall constitute costs and expenses of
22 administration of the case under section 503 of
23 title 11, United States Code, and shall be pay-
24 able in accordance with the payment provisions

1 under this subtitle notwithstanding the pend-
2 ency of the case under that title 11;

3 (B) shall not be stayed or affected as to
4 enforcement or collection by any stay or injunc-
5 tion power of any court; and

6 (C) shall not be impaired or discharged in
7 any current or future case under title 11,
8 United States Code.

9 (f) SUPERSEDING PROVISIONS.—

10 (1) IN GENERAL.—All of the following shall be
11 superseded in their entirety by this Act:

12 (A) The treatment of any asbestos claim in
13 any plan of reorganization with respect to any
14 debtor included in Tier I.

15 (B) Any asbestos claim against any debtor
16 included in Tier I.

17 (C) Any agreement, understanding, or un-
18 dertaking by any such debtor or any third party
19 with respect to the treatment of any asbestos
20 claim filed in a debtor's bankruptcy case or
21 with respect to a debtor before the date of en-
22 actment of this Act, whenever such debtor's
23 case is either still pending, if such case is pend-
24 ing under a chapter other than chapter 11 of
25 title 11, United States Code, or subject to con-

1 firmation or substantial consummation of a
2 plan of reorganization under chapter 11 of title
3 11, United States Code.

4 (2) PRIOR AGREEMENTS OF NO EFFECT.—Not-
5 withstanding section 403(c)(3), any plan of reorga-
6 nization, agreement, understanding, or undertaking
7 by any debtor (including any pre-petition agreement,
8 understanding, or undertaking that requires future
9 performance) or any third party under paragraph
10 (1), and any agreement, understanding, or under-
11 taking entered into in anticipation, contemplation, or
12 furtherance of a plan of reorganization, to the extent
13 it relates to any asbestos claim, shall be of no force
14 or effect, and no person shall have any right or
15 claim with respect to any of the foregoing.

16 **SEC. 203. SUBTIERS.**

17 (a) IN GENERAL.—

18 (1) SUBTIER LIABILITY.—Except as otherwise
19 provided under subsections (b), (d), and (l) of sec-
20 tion 204, persons or affiliated groups shall be in-
21 cluded within Tiers I through VII and shall pay
22 amounts to the Fund in accordance with this sec-
23 tion.

24 (2) REVENUES.—

1 (A) IN GENERAL.—For purposes of this
2 section, revenues shall be determined in accord-
3 ance with generally accepted accounting prin-
4 ciples, consistently applied, using the amount
5 reported as revenues in the annual report filed
6 with the Securities and Exchange Commission
7 in accordance with the Securities Exchange Act
8 of 1934 (15 U.S.C. 78a et seq.) for the most
9 recent fiscal year ending on or before December
10 31, 2002. If the defendant participant or affili-
11 ated group does not file reports with the Securi-
12 ties and Exchange Commission, revenues shall
13 be the amount that the defendant participant or
14 affiliated group would have reported as reve-
15 nues under the rules of the Securities and Ex-
16 change Commission in the event that it had
17 been required to file.

18 (B) INSURANCE PREMIUMS.—Any portion
19 of revenues of a defendant participant that is
20 derived from insurance premiums shall not be
21 used to calculate the payment obligation of that
22 defendant participant under this subtitle.

23 (C) DEBTORS.—Each debtor's revenues
24 shall include the revenues of the debtor and all
25 of the direct or indirect majority-owned subsidi-

1 aries of that debtor, except that the pro forma
2 revenues of a person that is included in Subtier
3 2 of Tier I shall not be included in calculating
4 the revenues of any debtor that is a direct or
5 indirect majority owner of such Subtier 2 per-
6 son. If a debtor or affiliated group includes a
7 person in respect of whose liabilities for asbes-
8 tos claims a class action trust has been estab-
9 lished, there shall be excluded from the 2002
10 revenues of such debtor or affiliated group—

11 (i) all revenues of the person in re-
12 spect of whose liabilities for asbestos
13 claims the class action trust was estab-
14 lished; and

15 (ii) all revenues of the debtor and af-
16 filiated group attributable to the historical
17 business operations or assets of such per-
18 son, regardless of whether such business
19 operations or assets were owned or con-
20 ducted during the year 2002 by such per-
21 son or by any other person included within
22 such debtor and affiliated group.

23 (b) TIER I SUBTIERS.—

1 (1) IN GENERAL.—Each debtor in Tier I shall
2 be included in subtiers and shall pay amounts to the
3 Fund as provided under this section.

4 (2) SUBTIER 1.—

5 (A) IN GENERAL.—All persons that are
6 debtors with prior asbestos expenditures of
7 \$1,000,000 or greater, shall be included in
8 Subtier 1.

9 (B) PAYMENT.—Each debtor included in
10 Subtier 1 shall pay on an annual basis 1.5184
11 percent of the debtor's 2002 revenues.

12 (C) OTHER ASSETS.—The Administrator,
13 at the sole discretion of the Administrator, may
14 allow a Subtier 1 debtor to satisfy its funding
15 obligation under this paragraph with assets
16 other than cash if the Administrator determines
17 that requiring an all-cash payment of the debt-
18 or's funding obligation would render the debt-
19 or's reorganization infeasible.

20 (D) LIABILITY.—

21 (i) IN GENERAL.—If a person who is
22 subject to a case pending under a chapter
23 of title 11, United States Code, as defined
24 in section 201(3)(A)(i), does not pay when
25 due any payment obligation for the debtor,

1 the Administrator shall have the right to
2 seek payment of all or any portion of the
3 entire amount due (as well as any other
4 amount for which the debtor may be liable
5 under sections 223 and 224) from any of
6 the direct or indirect majority-owned sub-
7 sidiaries under section 201(3)(A)(ii).

8 (ii) CAUSE OF ACTION.—Notwith-
9 standing section 221(e), this Act shall not
10 preclude actions among persons within a
11 debtor under section 201(3)(A) (i) and (ii)
12 with respect to the payment obligations
13 under this Act.

14 (3) SUBTIER 2.—

15 (A) IN GENERAL.—Notwithstanding para-
16 graph (2), all persons that are debtors that
17 have no material continuing business operations
18 but hold cash or other assets that have been al-
19 located or earmarked for the settlement of as-
20 bestos claims shall be included in Subtier 2.

21 (B) ASSIGNMENT OF ASSETS.—Not later
22 than 90 days after the date of enactment of
23 this Act, each person included in Subtier 2 shall
24 assign all of its assets to the Fund.

25 (4) SUBTIER 3.—

1 (A) IN GENERAL.—Notwithstanding para-
2 graph (2), all persons that are debtors other
3 than those included in Subtier 2, which have no
4 material continuing business operations and no
5 cash or other assets allocated or earmarked for
6 the settlement of any asbestos claim, shall be
7 included in Subtier 3.

8 (B) ASSIGNMENT OF UNENCUMBERED AS-
9 SETS.—Not later than 90 days after the date of
10 enactment of this Act, each person included in
11 Subtier 3 shall contribute an amount equal to
12 50 percent of its total unencumbered assets.

13 (C) CALCULATION OF UNENCUMBERED AS-
14 SETS.—Unencumbered assets shall be cal-
15 culated as the Subtier 3 person's total assets,
16 excluding insurance-related assets, less—

17 (i) all allowable administrative ex-
18 penses;

19 (ii) allowable priority claims under
20 section 507 of title 11, United States
21 Code; and

22 (iii) allowable secured claims.

23 (5) CLASS ACTION TRUST.—The assets of any
24 class action trust that has been established in re-
25 spect of the liabilities for asbestos claims of any per-

1 son included within a debtor and affiliated group
2 that has been included in Tier I (exclusive of any as-
3 sets needed to pay previously incurred expenses and
4 asbestos claims reduced to a verdict or final order or
5 judgment, within the meaning of section 403(d)(1),
6 before the date of enactment of this Act) shall be
7 transferred to the Fund not later than 6 months
8 after the date of enactment of this Act.

9 (c) TIER II SUBTIERS.—

10 (1) IN GENERAL.—Each person or affiliated
11 group in Tier II shall be included in 1 of the 5
12 subtiers of Tier II, based on the person's or affili-
13 ated group's revenues. Such subtiers shall each con-
14 tain as close to an equal number of total persons
15 and affiliated groups as possible, with—

16 (A) those persons or affiliated groups with
17 the highest revenues included in Subtier 1;

18 (B) those persons or affiliated groups with
19 the next highest revenues included in Subtier 2;

20 (C) those persons or affiliated groups with
21 the lowest revenues included in Subtier 5;

22 (D) those persons or affiliated groups with
23 the next lowest revenues included in Subtier 4;

24 and

1 (E) those persons or affiliated groups re-
2 maining included in Subtier 3.

3 (2) PAYMENTS.—Each person or affiliated
4 group within each subtier shall pay, on an annual
5 basis, the following:

6 (A) Subtier 1: \$【To be supplied】.

7 (B) Subtier 2: \$【To be supplied】.

8 (C) Subtier 3: \$【To be supplied】.

9 (D) Subtier 4: \$【To be supplied】.

10 (E) Subtier 5: \$【To be supplied】.

11 (d) TIER III SUBTIERS.—

12 (1) IN GENERAL.—Each person or affiliated
13 group in Tier III shall be included in 1 of the 5
14 subtiers of Tier III, based on the person’s or affili-
15 ated group’s revenues. Such subtiers shall each con-
16 tain as close to an equal number of total persons
17 and affiliated groups as possible, with—

18 (A) those persons or affiliated groups with
19 the highest revenues included in Subtier 1;

20 (B) those persons or affiliated groups with
21 the next highest revenues included in Subtier 2;

22 (C) those persons or affiliated groups with
23 the lowest revenues included in Subtier 5;

1 (D) those persons or affiliated groups with
2 the next lowest revenues included in Subtier 4;
3 and

4 (E) those persons or affiliated groups re-
5 maining included in Subtier 3.

6 (2) PAYMENTS.—Each person or affiliated
7 group within each subtier shall pay, on an annual
8 basis, the following:

9 (A) Subtier 1: \$【To be supplied】.

10 (B) Subtier 2: \$【To be supplied】.

11 (C) Subtier 3: \$【To be supplied】.

12 (D) Subtier 4: \$【To be supplied】.

13 (E) Subtier 5: \$【To be supplied】.

14 (e) TIER IV SUBTIERS.—

15 (1) IN GENERAL.—Each person or affiliated
16 group in Tier IV shall be included in 1 of the 4
17 subtiers of Tier IV, based on the person’s or affili-
18 ated group’s revenues. Such subtiers shall each con-
19 tain as close to an equal number of total persons
20 and affiliated groups as possible, with those persons
21 or affiliated groups with the highest revenues in
22 Subtier 1, those with the lowest revenues in Subtier
23 4. Those persons or affiliated groups with the high-
24 est revenues among those remaining will be included
25 in Subtier 2 and the rest in Subtier 3.

1 (2) PAYMENT.—Each person or affiliated group
2 within each subtier shall pay, on an annual basis,
3 the following:

4 (A) Subtier 1: \$【To be supplied】.

5 (B) Subtier 2: \$【To be supplied】.

6 (C) Subtier 3: \$【To be supplied】.

7 (D) Subtier 4: \$【To be supplied】.

8 (f) TIER V SUBTIERS.—

9 (1) IN GENERAL.—Each person or affiliated
10 group in Tier V shall be included in 1 of the 3
11 subtiers of Tier V, based on the person’s or affili-
12 ated group’s revenues. Such subtiers shall each con-
13 tain as close to an equal number of total persons
14 and affiliated groups as possible, with those persons
15 or affiliated groups with the highest revenues in
16 Subtier 1, those with the lowest revenues in Subtier
17 3, and those remaining in Subtier 2.

18 (2) PAYMENT.—Each person or affiliated group
19 within each subtier shall pay, on an annual basis,
20 the following:

21 (A) Subtier 1: \$【To be supplied】.

22 (B) Subtier 2: \$【To be supplied】.

23 (C) Subtier 3: \$【To be supplied】.

24 (g) TIER VI SUBTIERS.—

1 (1) IN GENERAL.—Each person or affiliated
2 group in Tier VI shall be included in 1 of the 3
3 subtiers of Tier VI, based on the person’s or affli-
4 ated group’s revenues. Such subtiers shall each con-
5 tain as close to an equal number of total persons
6 and affiliated groups as possible, with those persons
7 or affiliated groups with the highest revenues in
8 Subtier 1, those with the lowest revenues in Subtier
9 3, and those remaining in Subtier 2.

10 (2) PAYMENT.—Each person or affiliated group
11 within each subtier shall pay, on an annual basis,
12 the following:

13 (A) Subtier 1: \$【To be supplied】.

14 (B) Subtier 2: \$【To be supplied】.

15 (C) Subtier 3: \$【To be supplied】.

16 (h) TIER VII.—

17 (1) IN GENERAL.—Notwithstanding prior as-
18 bestos expenditures that might qualify a person or
19 affiliated group to be included in Tiers II, III, IV,
20 V, or VI, a person or affiliated group shall also be
21 included in Tier VII, if the person or affiliated
22 group—

23 (A) is or has at any time been subject to
24 asbestos claims brought under the Employers’
25 Liability Act (45 U.S.C. 51 et seq.), as a result

1 of operations as a common carrier by railroad;
2 and

3 (B) has paid (including any payments
4 made by others on behalf of such person or af-
5 filiated group) not less than \$5,000,000 in set-
6 tlement, judgment, defense, or indemnity costs
7 relating to such claims.

8 (2) ADDITIONAL AMOUNT.—The payment re-
9 quirement for persons or affiliated groups included
10 in Tier VII shall be in addition to any payment re-
11 quirement applicable to such person or affiliated
12 group under Tiers II through VI.

13 (3) SUBTIER 1.—Each person or affiliated
14 group in Tier VII with revenues of \$5,000,000,000
15 or more is included in Subtier 1 and shall make an-
16 nual payments of \$10,000,000 to the Fund.

17 (4) SUBTIER 2.—Each person or affiliated
18 group in Tier VII with revenues of less than
19 \$5,000,000,000, but not less than \$3,000,000,000 is
20 included in Subtier 2 and shall make annual pay-
21 ments of \$5,000,000 to the Fund.

22 (5) SUBTIER 3.—Each person or affiliated
23 group in Tier VII with revenues of less than
24 \$3,000,000,000, but not less than \$500,000,000 is

1 included in Subtier 3 and shall make annual pay-
2 ments of \$500,000 to the Fund.

3 (6) JOINT VENTURE REVENUES AND LIABIL-
4 ITY.—

5 (A) REVENUES.—For purposes of this sub-
6 section, the revenues of a joint venture shall be
7 included on a pro rata basis reflecting relative
8 joint ownership to calculate the revenues of the
9 parents of that joint venture. The joint venture
10 shall not be responsible for a contribution
11 amount under this subsection.

12 (B) LIABILITY.—For purposes of this sub-
13 section, the liability under the Act of April 22,
14 1908 (45 U.S.C. 51 et seq.), commonly known
15 as the Employers' Liability Act, shall be attrib-
16 uted to the parent owners of the joint venture
17 on a pro rata basis, reflecting their relative
18 share of ownership. The joint venture shall not
19 be responsible for a payment amount under this
20 provision.

21 **SEC. 204. ASSESSMENT ADMINISTRATION.**

22 (a) IN GENERAL.—Each defendant participant or af-
23 filiated group shall pay to the Fund in the amounts pro-
24 vided under this subtitle as appropriate for its tier and
25 subtier each year until the earlier to occur of the following:

1 (1) The participant or affiliated group has sat-
2 isfied its obligations under this subtitle during the
3 first 23 annual payment cycles of the operation of
4 the Fund.

5 (2) The amount received by the Fund from de-
6 fendant participants, excluding any amounts rebated
7 to defendant participants under subsection (d),
8 equals the maximum aggregate payment obligation
9 of section 202(a)(2).

10 (b) **SMALL BUSINESS EXEMPTION.**—Notwith-
11 standing any other provision of this subtitle, a person or
12 affiliated group that is a small business concern (as de-
13 fined under section 3 of the Small Business Act (15
14 U.S.C. 632)), on December 31, 2002, is exempt from any
15 payment requirement under this subtitle and shall not be
16 included in the subtier allocations under section 203.

17 (c) **PROCEDURES.**—The Administrator shall pre-
18 scribe procedures on how amounts payable under this sub-
19 title are to be paid, including, to the extent the Adminis-
20 trator determines appropriate, procedures relating to pay-
21 ment in installments.

22 (d) **ADJUSTMENTS.**—

23 (1) **IN GENERAL.**—Under expedited procedures
24 established by the Administrator, a defendant partic-
25 ipant may seek adjustment of the amount of its pay-

1 ment obligation based on severe financial hardship
2 or demonstrated inequity. The Administrator may
3 determine whether to grant an adjustment and the
4 size of any such adjustment, in accordance with this
5 subsection. A defendant participant has a right to
6 obtain a rehearing of the Administrator's determina-
7 tion under this subsection under the procedures pre-
8 scribed in subsection (i)(10). The Administrator may
9 adjust a defendant participant's payment obligations
10 under this subsection, either by forgiving the rel-
11 evant portion of the otherwise applicable payment
12 obligation or by providing relevant rebates from the
13 defendant hardship and inequity adjustment account
14 created under subsection (j) after payment of the
15 otherwise applicable payment obligation, at the dis-
16 cretion of the Administrator.

17 (2) FINANCIAL HARDSHIP ADJUSTMENTS.—

18 (A) IN GENERAL.—A defendant partici-
19 pant may apply for an adjustment based on fi-
20 nancial hardship at any time during the period
21 in which a payment obligation to the Fund re-
22 mains outstanding and may qualify for such ad-
23 justment by demonstrating that the amount of
24 its payment obligation under the statutory allo-

1 cation would constitute a severe financial hard-
2 ship.

3 (B) TERM.—Subject to the annual avail-
4 ability of funds in the defendant hardship and
5 inequity adjustment account established under
6 subsection (j), a financial hardship adjustment
7 under this subsection shall have a term of 3
8 years.

9 (C) RENEWAL.—After an initial hardship
10 adjustment is granted under this paragraph, a
11 defendant participant may renew its hardship
12 adjustment by demonstrating that it remains
13 justified.

14 (D) REINSTATEMENT.—Following the ex-
15 piration of the hardship adjustment period pro-
16 vided for under this section and during the
17 funding period prescribed under subsection (a),
18 the Administrator shall annually determine
19 whether there has been a material change in
20 the financial condition of the defendant partici-
21 pant such that the Administrator may, con-
22 sistent with the policies and legislative intent
23 underlying this Act, reinstate under terms and
24 conditions established by the Administrator any
25 part or all of the defendant participant's pay-

1 the subject of a settlement that re-
2 quired a payment to a plaintiff by or
3 on behalf of that defendant; and
4 (ii) shall qualify for a two-tier main
5 tier and a two-tier subtier adjustment re-
6 ducing the defendant participant's pay-
7 ment obligation based on inequity by dem-
8 onstrating that not less than 95 percent of
9 such person's prior asbestos expenditures
10 arose from claims related to the manufac-
11 ture and sale of railroad locomotives and
12 related products, so long as such person's
13 manufacture and sale of railroad loco-
14 motives and related products is temporally
15 and causally remote. For purposes of this
16 clause, a person's manufacture and sale of
17 railroad locomotives and related products
18 shall be deemed to be temporally and caus-
19 ally remote if the asbestos claims histori-
20 cally and generally filed against such per-
21 son relate to the manufacture and sale of
22 railroad locomotives and related products
23 by an entity dissolved more than 25 years
24 before the date of enactment of this Act.

1 (B) PAYMENT RATE.—For purposes of
2 subparagraph (A), the payment rate of a de-
3 fendant participant is the payment amount of
4 the defendant participant as a percentage of
5 such defendant participant's gross revenues for
6 the year ending December 31, 2002.

7 (C) TERM.—Subject to the annual avail-
8 ability of funds in the defendant hardship and
9 inequity adjustment account established under
10 subsection (j), an inequity adjustment under
11 this subsection shall have a term of 3 years.

12 (D) RENEWAL.—A defendant participant
13 may renew an inequity adjustment every 3
14 years by demonstrating that the adjustment re-
15 mains justified.

16 (E) REINSTATEMENT.—

17 (i) IN GENERAL.—Following the ter-
18 mination of an inequity adjustment under
19 subparagraph (A), and during the funding
20 period prescribed under subsection (a), the
21 Administrator shall annually determine
22 whether there has been a material change
23 in conditions which would support a find-
24 ing that the amount of the defendant par-
25 ticipant's payment under the statutory al-

1 location was not inequitable. Based on this
2 determination, the Administrator may,
3 consistent with the policies and legislative
4 intent underlying this Act, reinstate any or
5 all of the payment obligations of the de-
6 fendant participant as if the inequity ad-
7 justment had not been granted for that 3-
8 year period.

9 (ii) TERMS AND CONDITIONS.—In the
10 event of a reinstatement under clause (i),
11 the Administrator may require the defend-
12 ant participant to pay any part or all of
13 amounts not paid due to the inequity ad-
14 justment on such terms and conditions as
15 established by the Administrator.

16 (4) LIMITATION ON ADJUSTMENTS.—The ag-
17 gregate total of financial hardship adjustments
18 under paragraph (2) and inequity adjustments under
19 paragraph (3) in effect in any given year shall not
20 exceed \$300,000,000, except to the extent additional
21 monies are available for such adjustments as a re-
22 sult of carryover of prior years' funds under sub-
23 section (j)(3) or as a result of monies being made
24 available in that year under subsection (k)(1)(A).

25 (5) ADVISORY PANELS.—

1 (A) APPOINTMENT.—The Administrator
2 shall appoint a Financial Hardship Adjustment
3 Panel and an Inequity Adjustment Panel to ad-
4 vise the Administrator in carrying out this sub-
5 section.

6 (B) MEMBERSHIP.—The membership of
7 the panels appointed under subparagraph (A)
8 may overlap.

9 (C) COORDINATION.—The panels ap-
10 pointed under subparagraph (A) shall coordi-
11 nate their deliberations and advice.

12 (e) LIMITATION ON LIABILITY.—The liability of each
13 defendant participant to pay to the Fund shall be limited
14 to the payment obligations under this Act, and, except as
15 provided in subsection (f) and section 203(b)(2)(D), no
16 defendant participant shall have any liability for the pay-
17 ment obligations of any other defendant participant.

18 (f) CONSOLIDATION OF PAYMENTS.—

19 (1) IN GENERAL.—For purposes of determining
20 the payment levels of defendant participants, any af-
21 filiated group including 1 or more defendant partici-
22 pants may irrevocably elect, as part of the submis-
23 sions to be made under paragraphs (1) and (3) of
24 subsection (i), to report on a consolidated basis all
25 of the information necessary to determine the pay-

1 ment level under this subtitle and pay to the Fund
2 on a consolidated basis.

3 (2) ELECTION.—If an affiliated group elects
4 consolidation as provided in this subsection—

5 (A) for purposes of this Act other than
6 this subsection, the affiliated group shall be
7 treated as if it were a single participant, includ-
8 ing with respect to the assessment of a single
9 annual payment under this subtitle for the en-
10 tire affiliated group;

11 (B) the ultimate parent of the affiliated
12 group shall prepare and submit each submission
13 to be made under subsection (i) on behalf of the
14 entire affiliated group and shall be solely liable,
15 as between the Administrator and the affiliated
16 group only, for the payment of the annual
17 amount due from the affiliated group under this
18 subtitle, except that, if the ultimate parent does
19 not pay when due any payment obligation for
20 the affiliated group, the Administrator shall
21 have the right to seek payment of all or any
22 portion of the entire amount due (as well as
23 any other amount for which the affiliated group
24 may be liable under sections 223 and 224) from
25 any member of the affiliated group;

1 (C) all members of the affiliated group
2 shall be identified in the submission under sub-
3 section (i) and shall certify compliance with this
4 subsection and the Administrator's regulations
5 implementing this subsection; and

6 (D) the obligations under this subtitle shall
7 not change even if, after the date of enactment
8 of this Act, the beneficial ownership interest be-
9 tween any members of the affiliated group shall
10 change.

11 (3) CAUSE OF ACTION.—Notwithstanding sec-
12 tion 221(e), this Act shall not preclude actions
13 among persons within an affiliated group with re-
14 spect to the payment obligations under this Act.

15 (g) DETERMINATION OF PRIOR ASBESTOS EXPENDI-
16 TURES.—

17 (1) IN GENERAL.—For purposes of determining
18 a defendant participant's prior asbestos expendi-
19 tures, the Administrator shall prescribe such rules
20 as may be necessary or appropriate to assure that
21 payments by indemnitors before December 31, 2002,
22 shall be counted as part of the indemnitor's prior as-
23 bestos expenditures, rather than the indemnitee's
24 prior asbestos expenditures, in accordance with this
25 subsection.

1 (2) INDEMNIFIABLE COSTS.—If an indemnitor
2 has paid or reimbursed to an indemnitee any
3 indemnifiable cost or otherwise made a payment on
4 behalf of or for the benefit of an indemnitee to a
5 third party for an indemnifiable cost before Decem-
6 ber 31, 2002, the amount of such indemnifiable cost
7 shall be solely for the account of the indemnitor for
8 purposes under this Act.

9 (3) INSURANCE PAYMENTS.—When computing
10 the prior asbestos expenditures with respect to an
11 asbestos claim, any amount paid or reimbursed by
12 insurance shall be solely for the account of the
13 indemnitor, even if the indemnitor would have no di-
14 rect right to the benefit of the insurance, if—

15 (A) such insurance has been paid or reim-
16 bursed to the indemnitor or the indemnitee, or
17 paid on behalf of or for the benefit of the
18 indemnitee; and

19 (B) the indemnitor has either, with respect
20 to such asbestos claim or any similar asbestos
21 claim, paid or reimbursed to its indemnitee any
22 indemnifiable cost or paid to any third party on
23 behalf of or for the benefit of the indemnitee
24 any indemnifiable cost.

1 (4) TREATMENT OF CERTAIN EXPENDI-
2 TURES.—Notwithstanding any other provision of
3 this Act, where—

4 (A) an indemnitor entered into a stock
5 purchase agreement in 1988 that involved the
6 sale of the stock of businesses that produced
7 friction and other products; and

8 (B) the stock purchase agreement provided
9 that the indemnitor indemnified the indemnitee
10 and its affiliates for losses arising from various
11 matters, including asbestos claims—

12 (i) asserted before the date of the
13 agreement; and

14 (ii) filed after the date of the agree-
15 ment and prior to the 10-year anniversary
16 of the stock sale,

17 then the prior asbestos expenditures arising from the
18 asbestos claims described in clauses (i) and (ii) shall
19 not be for the account of either the indemnitor or
20 indemnitee.

21 (h) MINIMUM ANNUAL PAYMENTS.—

22 (1) IN GENERAL.—The aggregate annual pay-
23 ments of defendant participants to the Fund shall be
24 at least \$2,500,000,000 for each calendar year in
25 the first 23 years of the Fund, or until such shorter

1 time as the condition set forth in subsection (a)(2)
2 of this section is attained.

3 (2) GUARANTEED PAYMENT ACCOUNT.—To the
4 extent payments in accordance with sections 202
5 and 203 (as modified by subsections (b), (d), (f) and
6 (g) of this section) fail in any year to raise at least
7 \$2,500,000,000 net of any adjustments under sub-
8 section (d), the balance needed to meet this required
9 minimum aggregate annual payment shall be ob-
10 tained from the defendant guaranteed payment ac-
11 count established under subsection (k).

12 (3) GUARANTEED PAYMENT SURCHARGE.—To
13 the extent the procedure set forth in paragraph (2)
14 is insufficient to satisfy the required minimum ag-
15 gregate annual payment net of any adjustments
16 under subsection (d), the Administrator may assess
17 a guaranteed payment surcharge under subsection
18 (l).

19 (i) PROCEDURES FOR MAKING PAYMENTS.—

20 (1) INITIAL YEAR: TIERS II–VI.—

21 (A) IN GENERAL.—Not later than 120
22 days after enactment of this Act, each defend-
23 ant participant that is included in Tiers II, III,
24 IV, V, or VI shall file with the Administrator—

1 (i) a statement of whether the defend-
2 ant participant irrevocably elects to report
3 on a consolidated basis under subsection
4 (f);

5 (ii) a good-faith estimate of its prior
6 asbestos expenditures;

7 (iii) a statement of its 2002 revenues,
8 determined in accordance with section
9 203(a)(2); and

10 (iv) payment in the amount specified
11 in section 203 for the lowest subtier of the
12 tier within which the defendant participant
13 falls, except that if the defendant partici-
14 pant, or the affiliated group including the
15 defendant participant, had 2002 revenues
16 exceeding \$3,000,000,000, it or its affili-
17 ated group shall pay the amount specified
18 for Subtier 3 of Tiers II, III, or IV or
19 Subtier 2 of Tiers V or VI, depending on
20 the applicable Tier.

21 (B) RELIEF.—The Administrator shall es-
22 tablish procedures to grant a defendant partici-
23 pant relief from its initial payment obligation
24 where the participant shows that it is likely to
25 qualify for a financial hardship adjustment or

1 inequity adjustment, and that failure to provide
2 interim relief would cause severe irreparable
3 harm. The Administrator's refusal to grant
4 such relief is subject to immediate judicial re-
5 view under section 303.

6 (2) INITIAL YEAR: TIER I.—Not later than 60
7 days after enactment of this Act, each debtor shall
8 file with the Administrator—

9 (A) a statement identifying the bankruptcy
10 case(s) associated with the debtor;

11 (B) a statement whether its prior asbestos
12 expenditures exceed \$1,000,000;

13 (C) a statement whether it has material
14 continuing business operations and, if not,
15 whether it holds cash or other assets that have
16 been allocated or earmarked for asbestos settle-
17 ments;

18 (D) in the case of debtors falling within
19 Subtier 1 of Tier I, a statement of the debtor's
20 2002 revenues, determined in accordance with
21 section 203(a)(2), and a payment under section
22 203(b)(2)(B);

23 (E) in the case of debtors falling within
24 Subtier 2 of Tier I, an assignment of its assets
25 under section 203(b)(3)(B); and

1 (F) in the case of debtors falling within
2 Subtier 3 of Tier I, a payment under section
3 203(b)(4)(B), and a statement of how such
4 payment was calculated.

5 (3) INITIAL YEAR: TIER VII.—Not later than 90
6 days after enactment of this Act, each defendant
7 participant in Tier VII shall file with the
8 Administrator—

9 (A) a good-faith estimate of all payments
10 of the type described in section 203(h)(1) (as
11 modified by section 203(h)(6));

12 (B) a statement of revenues calculated in
13 accordance with sections 203(a)(2) and 203(h);
14 and

15 (C) payment in the amount specified in
16 section 203(h).

17 (4) NOTICE TO PARTICIPANTS.—Not later than
18 240 days after enactment of this Act, the Adminis-
19 trator shall—

20 (A) directly notify all reasonably identifi-
21 able defendant participants of the requirement
22 to submit information necessary to calculate the
23 amount of any required payment to the Fund;
24 and

1 (B) publish in the Federal Register a
2 notice—

3 (i) setting forth the criteria in this
4 Act, and as prescribed by the Adminis-
5 trator in accordance with this Act, for pay-
6 ing under this subtitle as a defendant par-
7 ticipant and requiring any person who may
8 be a defendant participant to submit such
9 information; and

10 (ii) that includes a list of all defend-
11 ant participants notified by the Adminis-
12 trator under subparagraph (A), and pro-
13 vides for 30 days for the submission by the
14 public of comments or information regard-
15 ing the completeness and accuracy of the
16 list of identified defendant participants.

17 (5) RESPONSE REQUIRED.—

18 (A) IN GENERAL.—Any person who re-
19 ceives notice under paragraph (4)(A), and any
20 other person meeting the criteria specified in
21 the notice published under paragraph (4)(B),
22 shall provide the Administrator with an address
23 to send any notice from the Administrator in
24 accordance with this Act and all the informa-
25 tion required by the Administrator in accord-

1 ance with this subsection no later than the ear-
2 lier of—

3 (i) 30 days after the receipt of direct
4 notice; or

5 (ii) 30 days after the publication of
6 notice in the Federal Register.

7 (B) CERTIFICATION.—The response sub-
8 mitted under subparagraph (A) shall be signed
9 by a responsible corporate officer, general part-
10 ner, proprietor, or individual of similar author-
11 ity, who shall certify under penalty of law the
12 completeness and accuracy of the information
13 submitted.

14 (C) CONSENT TO AUDIT AUTHORITY.—The
15 response submitted under subparagraph (A)
16 shall include, on behalf of the defendant partici-
17 pant or affiliated group, a consent to the Ad-
18 ministrator's audit authority under section
19 221(d).

20 (6) NOTICE OF INITIAL DETERMINATION.—

21 (A) IN GENERAL.—

22 (i) NOTICE TO INDIVIDUAL.—Not
23 later than 60 days after receiving a re-
24 sponse under paragraph (5), the Adminis-
25 trator shall send the person a notice of ini-

1 tial determination identifying the tier and
2 subtier, if any, into which the person falls
3 and the annual payment obligation, if any,
4 to the Fund, which determination shall be
5 based on the information received from the
6 person under this subsection and any other
7 pertinent information available to the Ad-
8 ministrator and identified to the defendant
9 participant.

10 (ii) PUBLIC NOTICE.—Not later than
11 7 days after sending the notification of ini-
12 tial determination to defendant partici-
13 pants, the Administrator shall publish in
14 the Federal Register a notice listing the
15 defendant participants that have been sent
16 such notification, and the initial deter-
17 mination identifying the tier and subtier
18 assignment and annual payment obligation
19 of each identified participant.

20 (B) NO RESPONSE; INCOMPLETE RE-
21 SPONSE.—If no response in accordance with
22 paragraph (5) is received from a defendant par-
23 ticipant, or if the response is incomplete, the
24 initial determination shall be based on the best
25 information available to the Administrator.

1 (C) PAYMENTS.—Within 30 days of receiv-
2 ing a notice of initial determination requiring
3 payment, the defendant participant shall pay
4 the Administrator the amount required by the
5 notice, after deducting any previous payment
6 made by the participant under this subsection.
7 If the amount that the defendant participant is
8 required to pay is less than any previous pay-
9 ment made by the participant under this sub-
10 section, the Administrator shall credit any ex-
11 cess payment against the future payment obli-
12 gations of that defendant participant. The
13 pendency of a petition for rehearing under
14 paragraph (10) shall not stay the obligation of
15 the participant to make the payment specified
16 in the Administrator’s notice.

17 (7) EXEMPTIONS FOR INFORMATION RE-
18 QUIRED.—

19 (A) PRIOR ASBESTOS EXPENDITURES.—In
20 lieu of submitting information related to prior
21 asbestos expenditures as may be required for
22 purposes of this subtitle, a non-debtor defend-
23 ant participant may consent to be assigned to
24 Tier II.

1 (B) REVENUES.—In lieu of submitting in-
2 formation related to revenues as may be re-
3 quired for purposes of this subtitle, a non-debt-
4 or defendant participant may consent to be as-
5 signed to Subtier 1 of the defendant partici-
6 pant's applicable tier.

7 (8) NEW INFORMATION.—

8 (A) EXISTING PARTICIPANT.—The Admin-
9 istrator shall adopt procedures for requiring ad-
10 ditional payment, or refunding amounts already
11 paid, based on new information received.

12 (B) ADDITIONAL PARTICIPANT.—If the
13 Administrator, at any time, receives information
14 that an additional person may qualify as a de-
15 fendant participant, the Administrator shall re-
16 quire such person to submit information nec-
17 essary to determine whether that person is re-
18 quired to make payments, and in what amount,
19 under this subtitle and shall make any deter-
20 mination or take any other act consistent with
21 this Act based on such information or any other
22 information available to the Administrator with
23 respect to such person.

24 (9) SUBPOENAS.—The Administrator may re-
25 quest the Attorney General to subpoena persons to

1 compel testimony, records, and other information
2 relevant to its responsibilities under this section. The
3 Attorney General may enforce such subpoena in ap-
4 propriate proceedings in the United States district
5 court for the district in which the person to whom
6 the subpoena was addressed resides, was served, or
7 transacts business.

8 (10) REHEARING.—A defendant participant has
9 a right to obtain rehearing of the Administrator’s
10 determination under this subsection of the applicable
11 tier or subtier and of the Administrator’s determina-
12 tion under subsection (d) of a financial hardship or
13 inequity adjustment, if the request for rehearing is
14 filed within 30 days after the defendant participant’s
15 receipt of notice from the Administrator of the de-
16 termination. A defendant participant may not file an
17 action under section 303 unless the defendant par-
18 ticipant requests a rehearing under this paragraph.
19 The Administrator shall publish a notice in the Fed-
20 eral Register of any change in a defendant partici-
21 pant’s tier or subtier assignment or payment obliga-
22 tion as a result of a rehearing.

23 (j) DEFENDANT HARDSHIP AND INEQUITY ADJUST-
24 MENT ACCOUNT.—

1 (1) IN GENERAL.—To the extent the total pay-
2 ments by defendant participants in any given year
3 exceed the minimum aggregate annual payments
4 under subsection (h) of this section, excess monies
5 up to a maximum of \$300,000,000 in any such year
6 shall be placed in a defendant hardship and inequity
7 adjustment account established within the Fund by
8 the Administrator.

9 (2) USE OF ACCOUNT MONIES.—Monies from
10 the defendant hardship and inequity adjustment ac-
11 count shall be preserved and administered like the
12 remainder of the Fund, but shall be reserved and
13 may be used only—

14 (A) to make up for any relief granted to a
15 defendant participant for severe financial hard-
16 ship or demonstrated inequity under subsection
17 (d) of this section or to reimburse any defend-
18 ant participant granted such relief after its pay-
19 ment of the amount otherwise due; and

20 (B) if the condition set forth in subsection
21 (a)(2) of this section is met, for any purpose
22 that the Fund may serve under this Act.

23 (3) CARRYOVER OF UNUSED FUNDS.—To the
24 extent the Administrator does not, in any given year,
25 use all of the funds allocated to the account under

1 paragraph (1) for adjustments granted under sub-
2 section (d), remaining funds in the account shall be
3 carried forward for use by the Administrator for ad-
4 justments in subsequent years.

5 (k) DEFENDANT GUARANTEED PAYMENT AC-
6 COUNT.—

7 (1) IN GENERAL.—Subject to subsections (h)
8 and (j), in the event there are excess monies paid by
9 defendant participants in any given year, such
10 monies—

11 (A) may be used to provide additional ad-
12 justments under subsection (d), up to a max-
13 imum aggregate of \$50,000,000 in such year;
14 and

15 (B) to the extent not used under subpara-
16 graph (A), shall be placed in a defendant guar-
17 anteed payment account established within the
18 Fund by the Administrator.

19 (2) USE OF ACCOUNT MONIES.—Monies from
20 the defendant guaranteed payment account shall be
21 preserved and administered like the remainder of the
22 Fund, but shall be reserved and may be used only—

23 (A) to ensure the minimum aggregate an-
24 nual payment set forth in subsection (h) net of

1 any adjustments under subsection (d) is
2 reached each year; and

3 (B) if the condition set forth in subsection
4 (a)(2) of this section is met, for any purpose
5 that the Fund may serve under this Act.

6 (l) GUARANTEED PAYMENT SURCHARGE.—

7 (1) IN GENERAL.—To the extent there are in-
8 sufficient monies in the defendant guaranteed pay-
9 ment account established in subsection (k) to attain
10 the minimum aggregate annual payment net of any
11 adjustments under subsection (d) in any given year,
12 the Administrator may impose on each defendant
13 participant a surcharge as necessary to raise the bal-
14 ance required to attain the minimum aggregate an-
15 nual payment net of any adjustments under sub-
16 section (d), as provided in this subsection. Any such
17 surcharge shall be imposed on a pro rata basis, in
18 accordance with each defendant participant's relative
19 annual liability under sections 202 and 203 (as
20 modified by subsections (b), (d), (f), and (g) of this
21 section).

22 (2) CERTIFICATION.—

23 (A) IN GENERAL.—Before imposing a
24 guaranteed payment surcharge under this sub-
25 section, the Administrator shall certify that he

1 or she has used all reasonable efforts to collect
2 mandatory payments for all defendant partici-
3 pants, including by using the authority in sub-
4 section (i)(9) of this section and section 223.

5 (B) NOTICE AND COMMENT.—Before mak-
6 ing a final certification under subparagraph
7 (C), the Administrator shall publish a notice in
8 the Federal Register of a proposed certification
9 and provide in such notice for a public comment
10 period of 30 days.

11 (C) FINAL CERTIFICATION.—

12 (i) IN GENERAL.—The Administrator
13 shall publish a notice of the final certifi-
14 cation in the Federal Register after consid-
15 eration of all comments submitted under
16 subparagraph (B).

17 (ii) WRITTEN NOTICE.—Not later
18 than 30 days after publishing any final
19 certification under clause (i), the Adminis-
20 trator shall provide each defendant partici-
21 pant with written notice of that defendant
22 participant's payment, including the
23 amount of any surcharge.

1 **Subtitle B—Asbestos Insurers**
2 **Commission**

3 **SEC. 210. DEFINITION.**

4 In this subtitle, the term “captive insurance com-
5 pany” means a company—

6 (1) whose entire beneficial interest is owned on
7 the date of enactment of this Act, directly or indi-
8 rectly, by a defendant participant or by the ultimate
9 parent or the affiliated group of a defendant partici-
10 pant;

11 (2) whose primary commercial business during
12 the period from calendar years 1940 through 1986
13 was to provide insurance to its ultimate parent or
14 affiliated group, or any portion of the affiliated
15 group or a combination thereof; and

16 (3) that was incorporated or operating no later
17 than December 31, 2003.

18 **SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COM-**
19 **MISSION.**

20 (a) ESTABLISHMENT.—There is established the As-
21 bestos Insurers Commission (referred to in this subtitle
22 as the “Commission”) to carry out the duties described
23 in section 212.

24 (b) MEMBERSHIP.—

1 (1) APPOINTMENT.—The Commission shall be
2 composed of 5 members who shall be appointed by
3 the President, by and with the advice and consent
4 of the Senate.

5 (2) QUALIFICATIONS.—

6 (A) EXPERTISE.—Members of the Com-
7 mission shall have sufficient expertise to fulfill
8 their responsibilities under this subtitle.

9 (B) CONFLICT OF INTEREST.—

10 (i) IN GENERAL.—No member of the
11 Commission appointed under paragraph
12 (1) may be an employee or immediate fam-
13 ily member of an employee of an insurer
14 participant. No member of the Commission
15 shall be a shareholder of any insurer par-
16 ticipant. No member of the Commission
17 shall be a former officer or director, or a
18 former employee or former shareholder of
19 any insurer participant who was such an
20 employee, shareholder, officer, or director
21 at any time during the 2-year period end-
22 ing on the date of the appointment, unless
23 that is fully disclosed.

24 (ii) DEFINITION.—In clause (i), the
25 term “shareholder” shall not include a

1 broadly based mutual fund that includes
2 the stocks of insurer participants as a por-
3 tion of its overall holdings.

4 (C) FEDERAL EMPLOYMENT.—A member
5 of the Commission may not be an officer or em-
6 ployee of the Federal Government, except by
7 reason of membership on the Commission.

8 (3) PERIOD OF APPOINTMENT.—Members shall
9 be appointed for the life of the Commission.

10 (4) VACANCIES.—Any vacancy in the Commis-
11 sion shall be filled in the same manner as the origi-
12 nal appointment.

13 (5) CHAIRMAN.—The President shall select a
14 Chairman from among the members of the Commis-
15 sion.

16 (c) MEETINGS.—

17 (1) INITIAL MEETING.—Not later than 30 days
18 after the date on which all members of the Commis-
19 sion have been appointed, the Commission shall hold
20 its first meeting.

21 (2) SUBSEQUENT MEETINGS.—The Commission
22 shall meet at the call of the Chairman, as necessary
23 to accomplish the duties under section 212.

1 (3) QUORUM.—No business may be conducted
2 or hearings held without the participation of a ma-
3 jority of the members of the Commission.

4 **SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.**

5 (a) DETERMINATION OF INSURER PAYMENT OBLIGA-
6 TIONS.—

7 (1) IN GENERAL.—

8 (A) DEFINITIONS.—For the purposes of
9 this Act, the terms “insurer” and “insurer par-
10 ticipant” shall, unless stated otherwise, include
11 direct insurers and reinsurers, as well as any
12 run-off entity established, in whole or in part,
13 to review and pay asbestos claims.

14 (B) PROCEDURES FOR DETERMINING IN-
15 SURER PAYMENTS.—The Commission shall de-
16 termine the amount that each insurer partici-
17 pant shall be required to pay into the Fund
18 under the procedures described in this section.
19 The Commission shall make this determination
20 by first promulgating a rule establishing a
21 methodology for allocation of payments among
22 insurer participants and then applying such
23 methodology to determine the individual pay-
24 ment for each insurer participant. The method-
25 ology may include 1 or more allocation formulas

1 to be applied to all insurer participants or
2 groups of similarly situated participants. The
3 Commission's rule shall include a methodology
4 for adjusting payments by insurer participants
5 to make up, during any applicable payment
6 year, any amount by which aggregate insurer
7 payments fall below the level required in para-
8 graph (3)(C). The Commission shall conduct a
9 thorough study (within the time limitations
10 under this subparagraph) of the accuracy of the
11 reserve allocation of each insurer participant,
12 and may request information from the Securi-
13 ties and Exchange Commission or any State
14 regulatory agency. Under this procedure, not
15 later than 120 days after the initial meeting of
16 the Commission, the Commission shall com-
17 mence a rulemaking proceeding under section
18 213(a) to propose and adopt a methodology for
19 allocating payments among insurer participants.
20 In proposing an allocation methodology, the
21 Commission may consult with such actuaries
22 and other experts as it deems appropriate.
23 After hearings and public comment on the pro-
24 posed allocation methodology, the Commission
25 shall as promptly as possible promulgate a final

1 rule establishing such methodology. After pro-
2 mulgation of the final rule, the Commission
3 shall determine the individual payment of each
4 insurer participant under the procedures set
5 forth in subsection (b).

6 (C) SCOPE.—Every insurer, reinsurer, and
7 runoff entity with asbestos-related obligations
8 in the United States shall be subject to the
9 Commission’s and Administrator’s authority
10 under this Act, including allocation determina-
11 tions, and shall be required to fulfill its pay-
12 ment obligation without regard as to whether it
13 is licensed in the United States. Every insurer
14 participant not licensed or domiciled in the
15 United States shall, upon the first payment to
16 the Fund, submit a written consent to the Com-
17 mission’s and Administrator’s authority under
18 this Act, and to the jurisdiction of the courts of
19 the United States for purposes of enforcing this
20 Act, in a form determined by the Adminis-
21 trator. Any insurer participant refusing to pro-
22 vide a written consent shall be subject to fines
23 and penalties as provided in section 223.

24 (2) AMOUNT OF PAYMENTS.—

1 (A) AGGREGATE PAYMENT OBLIGATION.—

2 The total payment required of all insurer par-
3 ticipants over the life of the Fund shall be
4 equal to **【To be supplied】**.

5 (B) ACCOUNTING STANDARDS.—In deter-
6 mining the payment obligations of participants
7 that are not licensed or domiciled in the United
8 States or that are runoff entities, the Commis-
9 sion shall use accounting standards required for
10 United States licensed direct insurers.

11 (C) CAPTIVE INSURANCE COMPANIES.—No
12 payment to the Fund shall be required from a
13 captive insurance company, unless and only to
14 the extent a captive insurance company, on the
15 date of enactment of this Act, has liability, di-
16 rectly or indirectly, for any asbestos claim of a
17 person or persons other than and unaffiliated
18 with its ultimate parent or affiliated group or
19 pool in which the ultimate parent participates
20 or participated, or unaffiliated with a person
21 that was its ultimate parent or a member of its
22 affiliated group or pool at the time the relevant
23 insurance or reinsurance was issued by the cap-
24 tive insurance company.

1 (D) SEVERAL LIABILITY.—Unless other-
2 wise provided under this Act, each insurer par-
3 ticipant's obligation to make payments to the
4 Fund is several. Unless otherwise provided
5 under this Act, there is no joint liability, and
6 the future insolvency by any insurer participant
7 shall not affect the payment required of any
8 other insurer participant.

9 (3) PAYMENT OF CRITERIA.—

10 (A) INCLUSION IN INSURER PARTICIPANT
11 CATEGORY.—

12 (i) IN GENERAL.—Insurers that have
13 paid, or been assessed by a legal judgment
14 or settlement, at least \$1,000,000 in de-
15 fense and indemnity costs before the date
16 of enactment of this Act in response to
17 claims for compensation for asbestos inju-
18 ries arising from a policy of liability insur-
19 ance or contract of liability reinsurance or
20 retrocessional reinsurance shall be insurer
21 participants in the Fund. Other insurers
22 shall be exempt from mandatory payments.

23 (ii) INAPPLICABILITY OF SECTION
24 202.—Since insurers may be subject in cer-
25 tain jurisdictions to direct action suits, and

1 it is not the intent of this Act to impose
2 upon an insurer, due to its operation as an
3 insurer, payment obligations to the Fund
4 in situations where the insurer is the sub-
5 ject of a direct action, no insurer subject
6 to mandatory payments pursuant to sec-
7 tion 212 shall also be liable for payments
8 to the Fund as a defendant participant
9 pursuant to section 202.

10 (B) INSURER PARTICIPANT ALLOCATION
11 METHODOLOGY.—

12 (i) IN GENERAL.—The Commission
13 shall establish the payment obligations of
14 individual insurer participants to reflect,
15 on an equitable basis, the relative tort sys-
16 tem liability of the participating insurers in
17 the absence of this Act, considering and
18 weighting, as appropriate (but exclusive of
19 workers' compensation), such factors as—

20 (I) historic premium for lines of
21 insurance associated with asbestos ex-
22 posure over relevant periods of time;

23 (II) recent loss experience for as-
24 bestos liability;

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1 (III) amounts reserved for asbes-
2 tos liability;

3 (IV) the likely cost to each in-
4 surer participant of its future liabil-
5 ities under applicable insurance poli-
6 cies; and

7 (V) any other factor the Commis-
8 sion may determine is relevant and
9 appropriate.

10 (ii) DETERMINATION OF RESERVES.—

11 The Commission may establish procedures
12 and standards for determination of the as-
13 bestos reserves of insurer participants. The
14 reserves of a United States licensed rein-
15 surer that is wholly owned by, or under
16 common control of, a United States li-
17 censed direct insurer shall be included as
18 part of the direct insurer's reserves when
19 the reinsurer's financial results are in-
20 cluded as part of the direct insurer's
21 United States operations, as reflected in
22 footnote 33 of its filings with the National
23 Association of Insurance Commissioners or
24 in published financial statements prepared

1 in accordance with generally accepted ac-
2 counting principles.

3 (C) PAYMENT SCHEDULE.—The aggregate
4 annual amount of payments by insurer partici-
5 pants over the life of the Fund shall be as fol-
6 lows:

7 (i) For year 1, \$[To be supplied].

8 (ii) For year 2, \$[To be supplied].

9 (iii) For year 3, \$[To be supplied].

10 (iv) For years 4 through 17, \$[To be
11 supplied] annually.

12 (v) For years 18 through 21, \$[To be
13 supplied] annually.

14 (vi) For years 22 through 26, \$[To
15 be supplied] annually.

16 (vii) For year 27, \$[To be supplied].

17 (D) CERTAIN RUNOFF ENTITIES.—

18 (i) IN GENERAL.—Whenever the Com-
19 mission requires payments by a runoff en-
20 tity that has assumed asbestos-related li-
21 abilities from a Lloyd's syndicate or names
22 that are members of such a syndicate, the
23 Commission shall not require payments
24 from such syndicates and names to the ex-
25 tent that the runoff entity makes its re-

1 required payments. In addition, such syn-
2 dicates and names shall be required to
3 make payments to the Fund in the amount
4 of any adjustment granted to the runoff
5 entity for severe financial hardship or ex-
6 ceptional circumstances.

7 (ii) INCLUDED RUNOFF ENTITIES.—
8 Subject to clause (i), a runoff entity shall
9 include any direct insurer or reinsurer
10 whose asbestos liability reserves have been
11 transferred, directly or indirectly, to the
12 runoff entity and on whose behalf the run-
13 off entity handles or adjusts and, where
14 appropriate, pays asbestos claims.

15 (E) FINANCIAL HARDSHIP AND EXCEP-
16 TIONAL CIRCUMSTANCE ADJUSTMENTS.—

17 (i) IN GENERAL.—Under the proce-
18 dures established in subsection (b), an in-
19 surer participant may seek adjustment of
20 the amount of its payments based on ex-
21 ceptional circumstances or severe financial
22 hardship.

23 (ii) FINANCIAL ADJUSTMENTS.—An
24 insurer participant may qualify for an ad-
25 justment based on severe financial hard-

1 ship by demonstrating that payment of the
2 amounts required by the Commission's
3 methodology would jeopardize the solvency
4 of such participant.

5 (iii) EXCEPTIONAL CIRCUMSTANCE
6 ADJUSTMENT.—An insurer participant
7 may qualify for an adjustment based on
8 exceptional circumstances by
9 demonstrating—

10 (I) that the amount of its pay-
11 ments under the Commission's alloca-
12 tion methodology is exceptionally in-
13 equitable when measured against the
14 amount of the likely cost to the par-
15 ticipant of its future liability in the
16 tort system in the absence of the
17 Fund;

18 (II) an offset credit as described
19 in subparagraphs (A) and (C) of sub-
20 section (b)(4); or

21 (III) other exceptional cir-
22 cumstances.

23 The Commission may determine whether
24 to grant an adjustment and the size of any
25 such adjustment, but adjustments shall not

1 reduce the aggregate payment obligations
2 of insurer participants specified in para-
3 graph (2)(A) and (3)(C).

4 (iv) TIME PERIOD OF ADJUSTMENT.—
5 Except for adjustments for offset credits,
6 adjustments granted under this subsection
7 shall have a term not to exceed 3 years. An
8 insurer participant may renew its adjust-
9 ment by demonstrating to the Adminis-
10 trator that it remains justified.

11 (b) PROCEDURE FOR NOTIFYING INSURER PARTICI-
12 PANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

13 (1) NOTICE TO PARTICIPANTS.—Not later than
14 30 days after promulgation of the final rule estab-
15 lishing an allocation methodology under subsection
16 (a)(1), the Commission shall—

17 (A) directly notify all reasonably identifi-
18 able insurer participants of the requirement to
19 submit information necessary to calculate the
20 amount of any required payment to the Fund
21 under the allocation methodology; and

22 (B) publish in the Federal Register a
23 notice—

24 (i) requiring any person who may be
25 an insurer participant (as determined by

1 criteria outlined in the notice) to submit
2 such information; and

3 (ii) that includes a list of all insurer
4 participants notified by the Commission
5 under subparagraph (A), and provides for
6 30 days for the submission of comments or
7 information regarding the completeness
8 and accuracy of the list of identified in-
9 surer participants.

10 (2) RESPONSE REQUIRED BY INDIVIDUAL IN-
11 SURER PARTICIPANTS.—

12 (A) IN GENERAL.—Any person who re-
13 ceives notice under paragraph (1)(A), and any
14 other person meeting the criteria specified in
15 the notice published under paragraph (1)(B),
16 shall respond by providing the Commission with
17 all the information requested in the notice
18 under a schedule or by a date established by
19 the Commission.

20 (B) CERTIFICATION.—The response sub-
21 mitted under subparagraph (A) shall be signed
22 by a responsible corporate officer, general part-
23 ner, proprietor, or individual of similar author-
24 ity, who shall certify under penalty of law the

1 completeness and accuracy of the information
2 submitted.

3 (3) NOTICE TO INSURER PARTICIPANTS OF INI-
4 TIAL PAYMENT DETERMINATION.—

5 (A) IN GENERAL.—

6 (i) NOTICE TO INSURERS.—Not later
7 than 120 days after receipt of the informa-
8 tion required by paragraph (2), the Com-
9 mission shall send each insurer participant
10 a notice of initial determination requiring
11 payments to the Fund, which shall be
12 based on the information received from the
13 participant in response to the Commis-
14 sion's request for information. An insurer
15 participant's payments shall be payable
16 over the schedule established in subsection
17 (a)(3)(C), in annual amounts proportionate
18 to the aggregate annual amount of pay-
19 ments for all insurer participants for the
20 applicable year.

21 (ii) PUBLIC NOTICE.—Not later than
22 7 days after sending the notification of ini-
23 tial determination to insurer participants,
24 the Commission shall publish in the Fed-
25 eral Register a notice listing the insurer

1 participants that have been sent such noti-
2 fication, and the initial determination on
3 the payment obligation of each identified
4 participant.

5 (B) NO RESPONSE; INCOMPLETE RE-
6 SPONSE.—If no response is received from an in-
7 surer participant, or if the response is incom-
8 plete, the initial determination requiring a pay-
9 ment from the insurer participant shall be
10 based on the best information available to the
11 Commission.

12 (4) COMMISSION REVIEW, REVISION, AND FI-
13 NALIZATION OF INITIAL PAYMENT DETERMINA-
14 TIONS.—

15 (A) COMMENTS FROM INSURER PARTICI-
16 PANTS.—Not later than 30 days after receiving
17 a notice of initial determination from the Com-
18 mission, an insurer participant may provide the
19 Commission with additional information to sup-
20 port adjustments to the required payments to
21 reflect severe financial hardship or exceptional
22 circumstances, including the provision of an off-
23 set credit for an insurer participant for the
24 amount of any asbestos-related payments it
25 made or was legally obligated to make, includ-

1 ing payments released from an escrow, as the
2 result of a bankruptcy judicially confirmed after
3 May 22, 2003, but before the date of enactment
4 of this Act.

5 (B) ADDITIONAL PARTICIPANTS.—If, be-
6 fore the final determination of the Commission,
7 the Commission receives information that an
8 additional person may qualify as an insurer
9 participant, the Commission shall require such
10 person to submit information necessary to de-
11 termine whether payments from that person
12 should be required, in accordance with the re-
13 quirements of this subsection.

14 (C) REVISION PROCEDURES.—The Com-
15 mission shall adopt procedures for revising ini-
16 tial payments based on information received
17 under subparagraphs (A) and (B), including a
18 provision requiring an offset credit for an in-
19 surer participant for the amount of any asbes-
20 tos-related payments it made or was legally ob-
21 ligated to make, including payments released
22 from an escrow, as the result of a bankruptcy
23 confirmed after May 22, 2003, but before the
24 date of enactment of this Act.

25 (5) EXAMINATIONS AND SUBPOENAS.—

1 (A) EXAMINATIONS.—The Commission
2 may conduct examinations of the books and
3 records of insurer participants to determine the
4 completeness and accuracy of information sub-
5 mitted, or required to be submitted, to the
6 Commission for purposes of determining partic-
7 ipant payments.

8 (B) SUBPOENAS.—The Commission may
9 request the Attorney General to subpoena per-
10 sons to compel testimony, records, and other in-
11 formation relevant to its responsibilities under
12 this section. The Attorney General may enforce
13 such subpoena in appropriate proceedings in
14 the United States district court for the district
15 in which the person to whom the subpoena was
16 addressed resides, was served, or transacts
17 business.

18 (6) ESCROW PAYMENTS.—Without regard to an
19 insurer participant's payment obligation under this
20 section, any escrow or similar account established
21 before the date of enactment of this Act by an in-
22 surer participant in connection with an asbestos
23 trust fund that has not been judicially confirmed by
24 final order by the date of enactment of this Act shall

1 be the property of the insurer participant and re-
2 turned to that insurer participant.

3 (7) NOTICE TO INSURER PARTICIPANTS OF
4 FINAL PAYMENT DETERMINATIONS.—Not later than
5 60 days after the notice of initial determination is
6 sent to the insurer participants, the Commission
7 shall send each insurer participant a notice of final
8 determination.

9 (c) INSURER PARTICIPANTS VOLUNTARY ALLOCA-
10 TION AGREEMENT.—

11 (1) IN GENERAL.—Not later than 30 days after
12 the Commission proposes its rule establishing an al-
13 location methodology under subsection (a)(1), direct
14 insurer participants licensed or domiciled in the
15 United States, other direct insurer participants, re-
16 insurer participants licensed or domiciled in the
17 United States, or other reinsurer participants, may
18 submit an allocation agreement, approved by all of
19 the participants in the applicable group, to the Com-
20 mission.

21 (2) ALLOCATION AGREEMENT.—To the extent
22 the participants in any such applicable group volun-
23 tarily agree upon an allocation arrangement, any
24 such allocation agreement shall only govern the allo-
25 cation of payments within that group and shall not

1 determine the aggregate amount due from that
2 group.

3 (3) CERTIFICATION.—The Commission shall de-
4 termine whether an allocation agreement submitted
5 under subparagraph (A) meets the requirements of
6 this subtitle and, if so, shall certify the agreement
7 as establishing the allocation methodology governing
8 the individual payment obligations of the partici-
9 pants who are parties to the agreement. The author-
10 ity of the Commission under this subtitle shall, with
11 respect to participants who are parties to a certified
12 allocation agreement, terminate on the day after the
13 Commission certifies such agreement. Under sub-
14 section (f), the Administrator shall assume responsi-
15 bility, if necessary, for calculating the individual
16 payment obligations of participants who are parties
17 to the certified agreement.

18 (d) COMMISSION REPORT.—

19 (1) RECIPIENTS.—Until the work of the Com-
20 mission has been completed and the Commission ter-
21 minated, the Commission shall submit an annual re-
22 port, containing the information described under
23 paragraph (2), to—

24 (A) the Committee on the Judiciary of the
25 Senate;

1 (B) the Committee on the Judiciary of the
2 House of Representatives; and

3 (C) the Administrator.

4 (2) CONTENTS.—The report under paragraph
5 (1) shall state the amount that each insurer partici-
6 pant is required to pay to the Fund, including the
7 payment schedule for such payments.

8 (e) INTERIM PAYMENTS.—

9 (1) AUTHORITY OF ADMINISTRATOR.—During
10 the period between the date of enactment of this Act
11 and the date when the Commission issues its final
12 determinations of payments, the Administrator shall
13 have the authority to require insurer participants to
14 make interim payments to the Fund to assure ade-
15 quate funding by insurer participants during such
16 period.

17 (2) AMOUNT OF INTERIM PAYMENTS.—During
18 any applicable year, the Administrator may require
19 insurer participants to make aggregate interim pay-
20 ments not to exceed the annual aggregate amount
21 specified in subsection (a)(3)(C).

22 (3) ALLOCATION OF PAYMENTS.—Interim pay-
23 ments shall be allocated among individual insurer
24 participants on an equitable basis as determined by
25 the Administrator. All payments required under this

1 subparagraph shall be credited against the partici-
2 pant's ultimate payment obligation to the Fund es-
3 tablished by the Commission. If an interim payment
4 exceeds the ultimate payment, the Fund shall pay
5 interest on the amount of the overpayment at a rate
6 determined by the Administrator. If the ultimate
7 payment exceeds the interim payment, the partici-
8 pant shall pay interest on the amount of the under-
9 payment at the same rate. Any participant may seek
10 an exemption from or reduction in any payment re-
11 quired under this subsection under the financial
12 hardship and exceptional circumstance standards es-
13 tablished in subsection (a)(3)(D).

14 (4) APPEAL OF INTERIM PAYMENT DECI-
15 SIONS.—A decision by the Administrator to establish
16 an interim payment obligation shall be considered
17 final agency action and reviewable under section
18 303, except that the reviewing court may not stay an
19 interim payment during the pendency of the appeal.

20 (f) TRANSFER OF AUTHORITY FROM THE COMMIS-
21 SION TO THE ADMINISTRATOR.—

22 (1) IN GENERAL.—Upon termination of the
23 Commission under section 215, the Administrator
24 shall assume all the responsibilities and authority of
25 the Commission, except that the Administrator shall

1 not have the power to modify the allocation method-
2 ology established by the Commission or by certified
3 agreement or to promulgate a rule establishing any
4 such methodology.

5 (2) FINANCIAL HARDSHIP AND EXCEPTIONAL
6 CIRCUMSTANCE ADJUSTMENTS.—Upon termination
7 of the Commission under section 215, the Adminis-
8 trator shall have the authority, upon application by
9 any insurer participant, to make adjustments to an-
10 nual payments upon the same grounds as provided
11 in subsection (a)(3)(D). Adjustments granted under
12 this subsection shall have a term not to exceed 3
13 years. An insurer participant may renew its adjust-
14 ment by demonstrating that it remains justified.
15 Upon the grant of any adjustment, the Adminis-
16 trator shall increase the payments required of all
17 other insurer participants so that there is no reduc-
18 tion in the aggregate payment required of all insurer
19 participants for the applicable years. The increase in
20 an insurer participant's required payment shall be in
21 proportion to such participant's share of the aggre-
22 gate payment obligation of all insurer participants.

23 (3) FINANCIAL SECURITY REQUIREMENTS.—
24 Whenever an insurer participant's A.M. Best's
25 claims payment rating or Standard and Poor's fi-

1 nancial strength rating falls below A–, and until
2 such time as either the insurer participant’s A.M.
3 Best’s Rating or Standard and Poor’s rating is
4 equal to or greater than A–, the Administrator
5 shall have the authority to require that the partici-
6 pating insurer either—

7 (A) pay the present value of its remaining
8 Fund payments at a discount rate determined
9 by the Administrator; or

10 (B) provide an evergreen letter of credit or
11 financial guarantee for future payments issued
12 by an institution with an A.M. Best’s claims
13 payment rating or Standard & Poor’s financial
14 strength rating of at least A+.

15 (g) JUDICIAL REVIEW.—The Commission’s rule es-
16 tablishing an allocation methodology, its final determina-
17 tions of payment obligations and other final action shall
18 be judicially reviewable as provided in title III.

19 **SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.**

20 (a) RULEMAKING.—The Commission shall promul-
21 gate such rules and regulations as necessary to implement
22 its authority under this Act, including regulations gov-
23 erning an allocation methodology. Such rules and regula-
24 tions shall be promulgated after providing interested par-
25 ties with the opportunity for notice and comment.

1 (b) HEARINGS.—The Commission may hold such
2 hearings, sit and act at such times and places, take such
3 testimony, and receive such evidence as the Commission
4 considers advisable to carry out this Act. The Commission
5 shall also hold a hearing on any proposed regulation estab-
6 lishing an allocation methodology, before the Commis-
7 sion’s adoption of a final regulation.

8 (c) INFORMATION FROM FEDERAL AND STATE
9 AGENCIES.—The Commission may secure directly from
10 any Federal or State department or agency such informa-
11 tion as the Commission considers necessary to carry out
12 this Act. Upon request of the Chairman of the Commis-
13 sion, the head of such department or agency shall furnish
14 such information to the Commission.

15 (d) POSTAL SERVICES.—The Commission may use
16 the United States mails in the same manner and under
17 the same conditions as other departments and agencies of
18 the Federal Government.

19 (e) GIFTS.—The Commission may not accept, use, or
20 dispose of gifts or donations of services or property.

21 (f) EXPERT ADVICE.—In carrying out its responsibil-
22 ities, the Commission may enter into such contracts and
23 agreements as the Commission determines necessary to
24 obtain expert advice and analysis.

1 **SEC. 214. PERSONNEL MATTERS.**

2 (a) COMPENSATION OF MEMBERS.—Each member of
3 the Commission shall be compensated at a rate equal to
4 the daily equivalent of the annual rate of basic pay pre-
5 scribed for level IV of the Executive Schedule under sec-
6 tion 5315 of title 5, United States Code, for each day (in-
7 cluding travel time) during which such member is engaged
8 in the performance of the duties of the Commission.

9 (b) TRAVEL EXPENSES.—The members of the Com-
10 mission shall be allowed travel expenses, including per
11 diem in lieu of subsistence, at rates authorized for employ-
12 ees of agencies under subchapter I of chapter 57 of title
13 5, United States Code, while away from their homes or
14 regular places of business in the performance of services
15 for the Commission.

16 (c) STAFF.—

17 (1) IN GENERAL.—The Chairman of the Com-
18 mission may, without regard to the civil service laws
19 and regulations, appoint and terminate an executive
20 director and such other additional personnel as may
21 be necessary to enable the Commission to perform
22 its duties. The employment of an executive director
23 shall be subject to confirmation by the Commission.

24 (2) COMPENSATION.—The Chairman of the
25 Commission may fix the compensation of the execu-
26 tive director and other personnel without regard to

1 chapter 51 and subchapter III of chapter 53 of title
2 5, United States Code, relating to classification of
3 positions and General Schedule pay rates, except
4 that the rate of pay for the executive director and
5 other personnel may not exceed the rate payable for
6 level V of the Executive Schedule under section 5316
7 of such title.

8 (d) **DETAIL OF GOVERNMENT EMPLOYEES.**—Any
9 Federal Government employee may be detailed to the
10 Commission without reimbursement, and such detail shall
11 be without interruption or loss of civil service status or
12 privilege.

13 (e) **PROCUREMENT OF TEMPORARY AND INTERMIT-**
14 **TENT SERVICES.**—The Chairman of the Commission may
15 procure temporary and intermittent services under section
16 3109(b) of title 5, United States Code, at rates for individ-
17 uals which do not exceed the daily equivalent of the annual
18 rate of basic pay prescribed for level V of the Executive
19 Schedule under section 5316 of such title.

20 **SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMIS-**
21 **SION.**

22 The Commission shall terminate 90 days after the
23 last date on which the Commission makes a final deter-
24 mination of contribution under section 212(b) or 90 days

1 after the last appeal of any final action by the Commission
2 is exhausted, whichever occurs later.

3 **SEC. 216. EXPENSES AND COSTS OF COMMISSION.**

4 All expenses of the Commission shall be paid from
5 the Fund.

6 **Subtitle C—Asbestos Injury Claims**
7 **Resolution Fund**

8 **SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS**
9 **RESOLUTION FUND.**

10 (a) ESTABLISHMENT.—There is established in the
11 Office of Asbestos Disease Compensation the Asbestos In-
12 jury Claims Resolution Fund, which shall be available to
13 pay—

14 (1) claims for awards for an eligible disease or
15 condition determined under title I;

16 (2) claims for reimbursement for medical moni-
17 toring determined under title I;

18 (3) principal and interest on borrowings under
19 subsection (b); and

20 (4) administrative expenses to carry out the
21 provisions of this Act.

22 (b) BORROWING AUTHORITY.—

23 (1) IN GENERAL.—The Administrator is au-
24 thorized to borrow from time to time amounts as set
25 forth in this subsection, for purposes of enhancing li-

1 liquidity available to the Fund for carrying out the
2 obligations of the Fund under this Act. The Admin-
3 istrator may authorize borrowing in such form, over
4 such term, with such necessary disclosure to its
5 lenders as will most efficiently enhance the Fund's
6 liquidity.

7 (2) FEDERAL FINANCING BANK.—In addition to
8 the general authority in paragraph (1), the Adminis-
9 trator may borrow from the Federal Financing Bank
10 in accordance with section 6 of the Federal Financ-
11 ing Bank Act of 1973 (12 U.S.C. 2285), as needed
12 for performance of the Administrator's duties under
13 this Act for the first 5 years.

14 (3) BORROWING CAPACITY.—The maximum
15 amount that may be borrowed under this subsection
16 at any given time is the amount that, taking into ac-
17 count all payment obligations related to all previous
18 amounts borrowed in accordance with this sub-
19 section and all committed obligations of the Fund at
20 the time of borrowing, can be repaid in full (with in-
21 terest) in a timely fashion from—

22 (A) the available assets of the Fund as of
23 the time of borrowing; and

24 (B) all amounts expected to be paid by
25 participants during the subsequent 10 years.

1 (4) REPAYMENT OBLIGATIONS.—Repayment of
2 monies borrowed by the Administrator under this
3 subsection is limited solely to amounts available in
4 the Asbestos Injury Claims Resolution Fund estab-
5 lished under this section.

6 (c) LOCKBOX FOR SEVERE ASBESTOS-RELATED IN-
7 JURY CLAIMANTS.—

8 (1) IN GENERAL.—Within the Fund, the Ad-
9 ministrator shall establish the following accounts:

10 (A) A Mesothelioma Account, which shall
11 be used solely to make payments to claimants
12 eligible for an award under the criteria of Level
13 X.

14 (B) A Lung Cancer Account, which shall
15 be used solely to make payments to claimants
16 eligible for an award under the criteria of Level
17 IX.

18 (C) A Severe Asbestosis Account, which
19 shall be used solely to make payments to claim-
20 ants eligible for an award under the criteria of
21 Level V.

22 (D) A Moderate Asbestosis Account, which
23 shall be used solely to make payments to claim-
24 ants eligible for an award under the criteria of
25 Level IV.

1 (2) ALLOCATION.—The Administrator shall al-
2 locate to each of the 4 accounts established under
3 paragraph (1) a portion of payments made to the
4 Fund adequate to compensate all anticipated claim-
5 ants for each account. Within 60 days after the date
6 of enactment of this Act, and periodically during the
7 life of the Fund, the Administrator shall determine
8 an appropriate amount to allocate to each account
9 after consulting appropriate epidemiological and sta-
10 tistical studies.

11 (d) AUDIT AUTHORITY.—

12 (1) IN GENERAL.—For the purpose of
13 ascertaining the correctness of any information pro-
14 vided or payments made to the Fund, or deter-
15 mining whether a person who has not made a pay-
16 ment to the Fund was required to do so, or deter-
17 mining the liability of any person for a payment to
18 the Fund, or collecting any such liability, or inquir-
19 ing into any offense connected with the administra-
20 tion or enforcement of this title, the Administrator
21 is authorized—

22 (A) to examine any books, papers, records,
23 or other data which may be relevant or material
24 to such inquiry;

1 (B) to summon the person liable for a pay-
2 ment under this title, or officer or employee of
3 such person, or any person having possession,
4 custody, or care of books of account containing
5 entries relating to the business of the person
6 liable or any other person the Administrator
7 may deem proper, to appear before the Admin-
8 istrator at a time and place named in the sum-
9 mons and to produce such books, papers,
10 records, or other data, and to give such testi-
11 mony, under oath, as may be relevant or mate-
12 rial to such inquiry; and

13 (C) to take such testimony of the person
14 concerned, under oath, as may be relevant or
15 material to such inquiry.

16 (2) FALSE, FRAUDULENT, OR FICTITIOUS
17 STATEMENTS OR PRACTICES.—If the Administrator
18 determines that materially false, fraudulent, or ficti-
19 tious statements or practices have been submitted or
20 engaged in by persons submitting information to the
21 Administrator or to the Asbestos Insurers Commis-
22 sion or any other person who provides evidence in
23 support of such submissions for purposes of deter-
24 mining payment obligations under this Act, the Ad-
25 ministrator may impose a civil penalty not to exceed

1 \$10,000 on any person found to have submitted or
2 engaged in a materially false, fraudulent, or ficti-
3 tious statement or practice under this Act. The Ad-
4 ministrator shall promulgate appropriate regulations
5 to implement this paragraph.

6 (e) IDENTITY OF CERTAIN DEFENDANT PARTICI-
7 PANTS; TRANSPARENCY.—

8 (1) SUBMISSION OF INFORMATION.—Not later
9 than 60 days after the date of enactment of this
10 Act, any person who, acting in good faith, has
11 knowledge that such person or such person's affili-
12 ated group has prior asbestos expenditures of
13 \$50,000,000 or greater, shall submit to the
14 Administrator—

15 (A) either the name of such person, or
16 such person's ultimate parent; and

17 (B) the likely tier to which such person or
18 affiliated group may be assigned under this Act.

19 (2) PUBLICATION.—Not later than 20 days
20 after the end of the 60-day period referred to in
21 paragraph (1), the Administrator or Interim Admin-
22 istrator, if the Administrator is not yet appointed,
23 shall publish in the Federal Register a list of sub-
24 missions required by this subsection, including the
25 name of such persons or ultimate parents and the

1 likely tier to which such persons or affiliated groups
2 may be assigned. After publication of such list, any
3 person who, acting in good faith, has knowledge that
4 any other person has prior asbestos expenditures of
5 \$50,000,000 or greater may submit to the Adminis-
6 trator or Interim Administrator information on the
7 identity of that person and the person's prior asbes-
8 tos expenditures.

9 (f) NO PRIVATE RIGHT OF ACTION.—Except as pro-
10 vided in sections 203(b)(2)(D)(ii) and 204(f)(3), there
11 shall be no private right of action under any Federal or
12 State law against any participant based on a claim of com-
13 pliance or noncompliance with this Act or the involvement
14 of any participant in the enactment of this Act.

15 **SEC. 222. MANAGEMENT OF THE FUND.**

16 (a) IN GENERAL.—Amounts in the Fund shall be
17 held for the exclusive purpose of providing benefits to as-
18 bestos claimants and their beneficiaries, including those
19 provided in subsection (c), and to otherwise defray the rea-
20 sonable expenses of administering the Fund.

21 (b) INVESTMENTS.—

22 (1) IN GENERAL.—Amounts in the Fund shall
23 be administered and invested with the care, skill,
24 prudence, and diligence, under the circumstances
25 prevailing at the time of such investment, that a

1 prudent person acting in a like capacity and manner
2 would use.

3 (2) STRATEGY.—The Administrator shall invest
4 amounts in the Fund in a manner that enables the
5 Fund to make current and future distributions to or
6 for the benefit of asbestos claimants. In pursuing an
7 investment strategy under this subparagraph, the
8 Administrator shall consider, to the extent relevant
9 to an investment decision or action—

10 (A) the size of the Fund;

11 (B) the nature and estimated duration of
12 the Fund;

13 (C) the liquidity and distribution require-
14 ments of the Fund;

15 (D) general economic conditions at the
16 time of the investment;

17 (E) the possible effect of inflation or defla-
18 tion on Fund assets;

19 (F) the role that each investment or course
20 of action plays with respect to the overall assets
21 of the Fund;

22 (G) the expected amount to be earned (in-
23 cluding both income and appreciation of cap-
24 ital) through investment of amounts in the
25 Fund; and

1 (H) the needs of asbestos claimants for
2 current and future distributions authorized
3 under this Act.

4 (c) MESOTHELIOMA RESEARCH AND TREATMENT
5 CENTERS.—

6 (1) IN GENERAL.—The Administrator shall pro-
7 vide \$1,000,000 from the Fund for each of fiscal
8 years 2005 through 2009 for each of up to 10 meso-
9 thelioma disease research and treatment centers.

10 (2) REQUIREMENTS.—The Centers shall—

11 (A) be chosen by the Director of the Na-
12 tional Institutes of Health;

13 (B) be chosen through competitive peer re-
14 view;

15 (C) be geographically distributed through-
16 out the United States with special consideration
17 given to areas of high incidence of mesothe-
18 lioma disease;

19 (D) be closely associated with Department
20 of Veterans Affairs medical centers to provide
21 research benefits and care to veterans who have
22 suffered excessively from mesothelioma;

23 (E) be engaged in research to provide
24 mechanisms for detection and prevention of

1 mesothelioma, particularly in the areas of pain
2 management and cures;

3 (F) be engaged in public education about
4 mesothelioma and prevention, screening, and
5 treatment;

6 (G) be participants in the National Meso-
7 thelioma Registry; and

8 (H) be coordinated in their research and
9 treatment efforts with other Centers and insti-
10 tutions involved in exemplary mesothelioma re-
11 search.

12 **SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.**

13 (a) DEFAULT.—If any participant fails to make any
14 payment in the amount of and according to the schedule
15 under this Act or as prescribed by the Administrator, after
16 demand and a 30-day opportunity to cure the default,
17 there shall be a lien in favor of the United States for the
18 amount of the delinquent payment (including interest)
19 upon all property and rights to property, whether real or
20 personal, belonging to such participant.

21 (b) BANKRUPTCY.—In the case of a bankruptcy or
22 insolvency proceeding, the lien imposed under subsection
23 (a) shall be treated in the same manner as a lien for taxes
24 due and owing to the United States for purposes of the
25 provisions of title 11, United States Code, or section

1 3713(a) of title 31, United States Code. The United
2 States Bankruptcy Court shall have jurisdiction over any
3 issue or controversy regarding lien priority and lien perfec-
4 tion arising in a bankruptcy case due to a lien imposed
5 under subsection (a).

6 (c) CIVIL ACTION.—

7 (1) IN GENERAL.—In any case in which there
8 has been a refusal or failure to pay any liability im-
9 posed under this Act, the Administrator may bring
10 a civil action in the United States District Court for
11 the District of Columbia, or any other appropriate
12 lawsuit or proceeding outside of the United States—

13 (A) to enforce the liability and any lien of
14 the United States imposed under this section;

15 (B) to subject any property of the partici-
16 pant, including any property in which the par-
17 ticipant has any right, title, or interest to the
18 payment of such liability; or

19 (C) for temporary, preliminary, or perma-
20 nent relief.

21 (2) ADDITIONAL PENALTIES.—In any action
22 under paragraph (1) in which the refusal or failure
23 to pay was willful, the Administrator may seek
24 recovery—

25 (A) of punitive damages;

1 (B) of the costs of any civil action under
2 this subsection, including reasonable fees in-
3 curred for collection, expert witnesses, and at-
4 torney's fees; and

5 (C) in addition to any other penalty, of a
6 fine equal to the total amount of the liability
7 that has not been collected.

8 (d) ENFORCEMENT AUTHORITY AS TO INSURER PAR-
9 TICIPANTS.—

10 (1) IN GENERAL.—In addition to or in lieu of
11 the enforcement remedies described in subsection
12 (c), the Administrator may seek to recover amounts
13 in satisfaction of a payment not timely paid by an
14 insurer participant under the procedures under this
15 subsection.

16 (2) SUBROGATION.—To the extent required to
17 establish personal jurisdiction over nonpaying in-
18 surer participants, the Administrator shall be
19 deemed to be subrogated to the contractual rights of
20 participants to seek recovery from nonpaying insur-
21 ing participants that are domiciled outside the
22 United States under the policies of liability insur-
23 ance or contracts of liability reinsurance or
24 retrocessional reinsurance applicable to asbestos
25 claims, and the Administrator may bring an action

1 or an arbitration against the nonpaying insurer par-
2 ticipants under the provisions of such policies and
3 contracts, provided that—

4 (A) any amounts collected under this sub-
5 section shall not increase the amount of deemed
6 erosion allocated to any policy or contract under
7 section 404, or otherwise reduce coverage avail-
8 able to a participant; and

9 (B) subrogation under this subsection shall
10 have no effect on the validity of the insurance
11 policies or reinsurance, and any contrary State
12 law is expressly preempted.

13 (3) RECOVERABILITY OF CONTRIBUTION.—For
14 purposes of this subsection—

15 (A) all contributions to the Fund required
16 of a participant shall be deemed to be sums le-
17 gally required to be paid for bodily injury re-
18 sulting from exposure to asbestos;

19 (B) all contributions to the Fund required
20 of any participant shall be deemed to be a sin-
21 gle loss arising from a single occurrence under
22 each contract to which the Administrator is
23 subrogated; and

24 (C) with respect to reinsurance contracts,
25 all contributions to the Fund required of a par-

1 participant shall be deemed to be payments to a
2 single claimant for a single loss.

3 (4) NO CREDIT OR OFFSET.—In any action
4 brought under this subsection, the nonpaying insurer
5 or reinsurer shall be entitled to no credit or offset
6 for amounts collectible or potentially collectible from
7 any participant nor shall such defaulting participant
8 have any right to collect any sums payable under
9 this section from any participant.

10 (5) COOPERATION.—Insureds and cedents shall
11 cooperate with the Administrator's reasonable re-
12 quests for assistance in any such proceeding. The
13 positions taken or statements made by the Adminis-
14 trator in any such proceeding shall not be binding
15 on or attributed to the insureds or cedents in any
16 other proceeding. The outcome of such a proceeding
17 shall not have a preclusive effect on the insureds or
18 cedents in any other proceeding and shall not be ad-
19 missible against any subrogee under this section.
20 The Administrator shall have the authority to settle
21 or compromise any claims against a nonpaying in-
22 surer participant under this subsection.

23 (e) BAR ON UNITED STATES BUSINESS.—If any di-
24 rect insurer or reinsurer refuses to furnish any informa-
25 tion requested by or to pay any contribution required by

1 this Act, then, in addition to any other penalties imposed
2 by this Act, the Administrator may issue an order barring
3 such entity and its affiliates from insuring risks located
4 within the United States or otherwise doing business with-
5 in the United States. Insurer participants or their affili-
6 ates seeking to obtain a license from any State to write
7 any type of insurance shall be barred from obtaining any
8 such license until payment of all contributions required as
9 of the date of license application.

10 (f) CREDIT FOR REINSURANCE.—If the Adminis-
11 trator determines that an insurer participant that is a re-
12 insurer is in default in paying any required contribution
13 or otherwise not in compliance with this Act, the Adminis-
14 trator may issue an order barring any direct insurer par-
15 ticipant from receiving credit for reinsurance purchased
16 from the defaulting reinsurer. Any State law governing
17 credit for reinsurance to the contrary is preempted.

18 (g) DEFENSE LIMITATION.—In any proceeding under
19 this section, the participant shall be barred from bringing
20 any challenge to any determination of the Administrator
21 or the Asbestos Insurers Commission regarding its liability
22 under this Act, or to the constitutionality of this Act or
23 any provision thereof, if such challenge could have been
24 made during the review provided under section 204(i)(10),
25 or in a judicial review proceeding under section 303.

1 (h) DEPOSIT OF FUNDS.—

2 (1) IN GENERAL.—Any funds collected under
3 subsection (c)(2) (A) or (C) shall be—

4 (A) deposited in the Fund; and

5 (B) used only to pay—

6 (i) claims for awards for an eligible
7 disease or condition determined under title
8 I; or

9 (ii) claims for reimbursement for med-
10 ical monitoring determined under title I.

11 (2) NO EFFECT ON OTHER LIABILITIES.—The
12 imposition of a fine under subsection (c)(2)(C) shall
13 have no effect on—

14 (A) the assessment of contributions under
15 subtitles A and B; or

16 (B) any other provision of this Act.

17 (i) PROPERTY OF THE ESTATE.—Section 541(b) of
18 title 11, United States Code, is amended—

19 (1) in paragraph (4)(B)(ii), by striking “or” at
20 the end;

21 (2) in paragraph (5), by striking “prohibition.”
22 and inserting “prohibition; or”; and

23 (3) by inserting after paragraph (5) and before
24 the last undesignated sentence the following:

1 bers of populations at risk of developing such condi-
2 tions.

3 (2) INFORMATION.—The information provided
4 under paragraph (1) shall include information
5 about—

6 (A) the signs and symptoms of asbestos-re-
7 lated medical conditions;

8 (B) the value of appropriate medical
9 screening programs; and

10 (C) actions that the individuals can take to
11 reduce their future health risks related to as-
12 bestos exposure.

13 (3) CONTRACTS.—Preference in any contract
14 under this subsection shall be given to providers that
15 are existing nonprofit organizations with a history
16 and experience of providing occupational health out-
17 reach and educational programs for individuals ex-
18 posed to asbestos.

19 (c) MEDICAL SCREENING PROGRAM.—

20 (1) ESTABLISHMENT OF PROGRAM.—Not later
21 than 18 months after the Administrator certifies
22 that the compensation under this Act is fully oper-
23 ational and processing claims at a reasonable rate,
24 the Administrator shall adopt regulations estab-
25 lishing a medical screening program for individuals

1 at high risk of disability resulting from an asbestos-
2 related disease. In promulgating such regulations,
3 the Administrator shall consider the views of the Ad-
4 visory Committee on Asbestos Disease Compensa-
5 tion, the Medical Advisory Committee, and the pub-
6 lic.

7 (2) ELIGIBILITY CRITERIA.—

8 (A) IN GENERAL.—The regulations pro-
9 mulgated under this subsection shall establish
10 criteria for participation in the medical screen-
11 ing program.

12 (B) CONSIDERATIONS.—In promulgating
13 eligibility criteria the Administrator shall take
14 into consideration all factors relevant to the in-
15 dividual's effective cumulative exposure to as-
16 bestos, including—

17 (i) any industry in which the indi-
18 vidual worked;

19 (ii) the individual's occupation and
20 work setting;

21 (iii) the historical period in which ex-
22 posure took place;

23 (iv) the duration of the exposure;

24 (v) the type of asbestos fiber to which
25 the individual exposed;

1 (vi) the intensity and duration of non-
2 occupational exposures; and

3 (vii) any other factors that the Ad-
4 ministrator determines relevant.

5 (3) PROTOCOLS.—The regulations promulgated
6 under this subsection shall establish protocols for
7 medical screening, which shall include—

8 (A) administration of a health evaluation
9 and work history questionnaire;

10 (B) an evaluation of smoking history;

11 (C) a physical examination by a qualified
12 physician with a doctor-patient relationship
13 with the individual;

14 (D) a chest x-ray read by a certified B-
15 reader as defined under section 121(a)(4); and

16 (E) pulmonary function testing as defined
17 under section 121(a)(13).

18 (4) FREQUENCY.—The Administrator shall es-
19 tablish the frequency with which medical screening
20 shall be provided or be made available to eligible in-
21 dividuals, which shall be not less than every 5 years.

22 (5) PROVISION OF SERVICES.—The Adminis-
23 trator shall provide medical screening to eligible in-
24 dividuals directly or by contract with another agency
25 of the Federal Government, with State or local gov-

1 ernments, or with private providers of medical serv-
2 ices. The Administrator shall establish strict quali-
3 fications for the providers of such services, and shall
4 periodically audit the providers of services under this
5 subsection, to ensure their integrity, high degree of
6 competence, and compliance with all applicable tech-
7 nical and professional standards. No provider of
8 medical screening services may have earned more
9 than 15 percent of their income from the provision
10 of services of any kind in connection with asbestos
11 litigation in any of the 3 years preceding the date
12 of enactment of this Act. All contracts with pro-
13 viders of medical screening services under this sub-
14 section shall contain provisions allowing the Admin-
15 istrator to terminate such contracts for cause if the
16 Administrator determines that the service provider
17 fails to meet the qualifications established under this
18 subsection.

19 (6) FUNDING; PERIODIC REVIEW.—

20 (A) FUNDING.—The Administrator may
21 make available from the Fund not more than
22 \$30,000,000 each year in each of the 5 years
23 following the effective date of the medical
24 screening program. Notwithstanding the pre-
25 ceding sentence, the Administrator shall sus-

1 pend the operation of the program or reduce its
2 funding level if necessary to preserve the sol-
3 veny of the Fund and to prevent the sunset of
4 the overall program under section 405(f).

5 (B) REVIEW.—The Administrator’s first
6 annual report under section 405 following the
7 close of the 4th year of operation of the medical
8 screening program shall include an analysis of
9 the usage of the program, its cost and effective-
10 ness, its medical value, and the need to con-
11 tinue that program for an additional 5-year pe-
12 riod. The Administrator shall also recommend
13 to Congress any improvements that may be re-
14 quired to make the program more effective, effi-
15 cient, and economical, and shall recommend a
16 funding level for the program for the 5 years
17 following the period of initial funding referred
18 to under subparagraph (A).

19 (d) LIMITATION.—In no event shall the total amount
20 allocated to the medical screening program established
21 under this subsection over the lifetime of the Fund exceed
22 \$600,000,000.

23 (e) MEDICAL MONITORING PROGRAM AND PROTO-
24 COLS.—

1 (1) IN GENERAL.—The Administrator shall es-
2 tablish procedures for a medical monitoring program
3 for persons exposed to asbestos who have been ap-
4 proved for level I compensation under section 131.

5 (2) PROCEDURES.—The procedures for medical
6 monitoring shall include—

7 (A) specific medical tests to be provided to
8 eligible individuals and the periodicity of those
9 tests, which shall initially be provided every 3
10 years and include—

11 (i) administration of a health evalua-
12 tion and work history questionnaire;

13 (ii) physical examinations, including
14 blood pressure measurement, chest exam-
15 ination, and examination for clubbing;

16 (iii) AP and lateral chest x-ray; and

17 (iv) spirometry performed according
18 to ATS standards;

19 (B) qualifications of medical providers who
20 are to provide the tests required under subpara-
21 graph (A); and

22 (C) administrative provisions for reim-
23 bursement from the Fund of the costs of moni-
24 toring eligible claimants, including the costs as-
25 sociated with the visits of the claimants to phy-

1 sicians in connection with medical monitoring,
2 and with the costs of performing and analyzing
3 the tests.

4 (3) PREFERENCES.—

5 (A) IN GENERAL.—In administering the
6 monitoring program under this subsection, pref-
7 erence shall be given to medical and program
8 providers with—

9 (i) a demonstrated capacity for identi-
10 fying, contacting, and evaluating popu-
11 lations of workers or others previously ex-
12 posed to asbestos; and

13 (ii) experience in establishing net-
14 works of medical providers to conduct med-
15 ical screening and medical monitoring ex-
16 aminations.

17 (B) PROVISION OF LISTS.—Claimants that
18 are eligible to participate in the medical moni-
19 toring program shall be provided with a list of
20 approved providers in their geographic area at
21 the time they become eligible to receive medical
22 monitoring.

23 (f) CONTRACTS.—The Administrator may enter into
24 contracts with qualified program providers that would per-
25 mit the program providers to undertake large-scale med-

1 ical screening and medical monitoring programs by means
2 of subcontracts with a network of medical providers, or
3 other health providers.

4 (g) REVIEW.—Not later than 5 years after the date
5 of enactment of this Act, and every 5 years thereafter,
6 the Administrator shall review, and if necessary update,
7 the protocols and procedures established under this sec-
8 tion.

9 **TITLE III—JUDICIAL REVIEW**

10 **SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.**

11 (a) EXCLUSIVE JURISDICTION.—The United States
12 Court of Appeals for the District of Columbia Circuit shall
13 have exclusive jurisdiction over any action to review rules
14 or regulations promulgated by the Administrator or the
15 Asbestos Insurers Commission under this Act.

16 (b) PERIOD FOR FILING PETITION.—A petition for
17 review under this section shall be filed not later than 60
18 days after the date notice of such promulgation appears
19 in the Federal Register.

20 (c) EXPEDITED PROCEDURES.—The United States
21 Court of Appeals for the District of Columbia shall provide
22 for expedited procedures for reviews under this section.

23 **SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.**

24 (a) IN GENERAL.—Any claimant adversely affected
25 or aggrieved by a final decision of the Administrator

1 awarding or denying compensation under title I may peti-
2 tion for judicial review of such decision. Any petition for
3 review under this section shall be filed within 90 days of
4 the issuance of a final decision of the Administrator.

5 (b) EXCLUSIVE JURISDICTION.—A petition for review
6 may only be filed in the United States Court of Appeals
7 for the circuit in which the claimant resides at the time
8 of the issuance of the final order.

9 (c) STANDARD OF REVIEW.—The court shall uphold
10 the decision of the Administrator unless the court deter-
11 mines, upon review of the record as a whole, that the deci-
12 sion is not supported by substantial evidence, is contrary
13 to law, or is not in accordance with procedure required
14 by law.

15 (d) EXPEDITED PROCEDURES.—The United States
16 Court of Appeals shall provide for expedited procedures
17 for reviews under this section.

18 **SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESS-**
19 **MENTS.**

20 (a) EXCLUSIVE JURISDICTION.—The United States
21 Court of Appeals for the District of Columbia Circuit shall
22 have exclusive jurisdiction over any action to review a final
23 determination by the Administrator or the Asbestos Insur-
24 ers Commission regarding the liability of any person to
25 make a payment to the Fund, including a notice of appli-

1 cable subtier assignment under section 204(i), a notice of
2 financial hardship or inequity determination under section
3 204(d), and a notice of insurer participant obligation
4 under section 212(b).

5 (b) PERIOD FOR FILING ACTION.—A petition for re-
6 view under subsection (a) shall be filed not later than 60
7 days after a final determination by the Administrator or
8 the Commission giving rise to the action. Any defendant
9 participant who receives a notice of its applicable subtier
10 under section 204(i) or a notice of financial hardship or
11 inequity determination under section 204(d) shall com-
12 mence any action within 30 days after a decision on re-
13 hearing under section 204(i)(10), and any insurer partici-
14 pant who receives a notice of a payment obligation under
15 section 212(b) shall commence any action within 30 days
16 after receiving such notice. The court shall give such ac-
17 tion expedited consideration.

18 **SEC. 304. OTHER JUDICIAL CHALLENGES.**

19 (a) EXCLUSIVE JURISDICTION.—The United States
20 District Court for the District of Columbia shall have ex-
21 clusive jurisdiction over any action for declaratory or in-
22 junctive relief challenging any provision of this Act. An
23 action under this section shall be filed not later than 60
24 days after the date of enactment of this Act or 60 days

1 after the final action by the Administrator or the Commis-
2 sion giving rise to the action, whichever is later.

3 (b) DIRECT APPEAL.—A final decision in the action
4 shall be reviewable on appeal directly to the Supreme
5 Court of the United States. Such appeal shall be taken
6 by the filing of a notice of appeal within 30 days, and
7 the filing of a jurisdictional statement within 60 days, of
8 the entry of the final decision.

9 (c) EXPEDITED PROCEDURES.—It shall be the duty
10 of the United States District Court for the District of Co-
11 lumbia and the Supreme Court of the United States to
12 advance on the docket and to expedite to the greatest pos-
13 sible extent the disposition of the action and appeal.

14 **SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL RE-**
15 **VIEW.**

16 (a) NO STAYS.—No court may issue a stay of pay-
17 ment by any party into the Fund pending its final judg-
18 ment.

19 (b) EXCLUSIVITY OF REVIEW.—An action of the Ad-
20 ministrator or the Asbestos Insurers Commission for
21 which review could have been obtained under section 301,
22 302, or 303 shall not be subject to judicial review in any
23 other proceeding.

24 (c) CONSTITUTIONAL REVIEW.—

1 (1) IN GENERAL.—Notwithstanding any other
2 provision of law, any interlocutory or final judgment,
3 decree, or order of a Federal court holding this Act,
4 or any provision or application thereof, unconstitu-
5 tional shall be reviewable as a matter of right by di-
6 rect appeal to the Supreme Court.

7 (2) PERIOD FOR FILING APPEAL.—Any such
8 appeal shall be filed not more than 30 days after
9 entry of such judgment, decree, or order.

10 **TITLE IV—MISCELLANEOUS** 11 **PROVISIONS**

12 **SEC. 401. FALSE INFORMATION.**

13 (a) IN GENERAL.—Chapter 63 of title 18, United
14 States Code, is amended by adding at the end the fol-
15 lowing:

16 **“§ 1348. Fraud and false statements in connection** 17 **with participation in Asbestos Injury** 18 **Claims Resolution Fund**

19 “(a) FRAUD RELATING TO ASBESTOS INJURY
20 CLAIMS RESOLUTION FUND.—Whoever knowingly and
21 willfully executes, or attempts to execute, a scheme or arti-
22 fice to defraud the Office of Asbestos Disease Compensa-
23 tion or the Asbestos Insurers Commission under title II
24 of the Fairness in Asbestos Injury Resolution Act of 2005

1 shall be fined under this title or imprisoned not more than
2 20 years, or both.

3 “(b) FALSE STATEMENT RELATING TO ASBESTOS
4 INJURY CLAIMS RESOLUTION FUND.—Whoever, in any
5 matter involving the Office of Asbestos Disease Compensa-
6 tion or the Asbestos Insurers Commission, knowingly and
7 willfully—

8 “(1) falsifies, conceals, or covers up by any
9 trick, scheme, or device a material fact;

10 “(2) makes any materially false, fictitious, or
11 fraudulent statements or representations; or

12 “(3) makes or uses any false writing or docu-
13 ment knowing the same to contain any materially
14 false, fictitious, or fraudulent statement or entry, in
15 connection with the award of a claim or the deter-
16 mination of a participant’s payment obligation under
17 title I or II of the Fairness in Asbestos Injury Reso-
18 lution Act of 2005 shall be fined under this title or
19 imprisoned not more than 10 years, or both.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of sections for chapter 63 of title 18, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

“1348. Fraud and false statements in connection with participation in As-
bestos Injury Claims Resolution Fund”.

1 **SEC. 402. EFFECT ON BANKRUPTCY LAWS.**

2 (a) NO AUTOMATIC STAY.—Section 362(b) of title
3 11, United States Code, is amended—

4 (1) in paragraph (17), by striking “or” at the
5 end;

6 (2) in paragraph (18), by striking the period at
7 the end and inserting “; or”; and

8 (3) by inserting after paragraph (18) the fol-
9 lowing:

10 “(19) under subsection (a) of this section of the
11 enforcement of any payment obligations under sec-
12 tion 204 of the Fairness in Asbestos Injury Resolu-
13 tion Act of 2005, against a debtor, or the property
14 of the estate of a debtor, that is a participant (as
15 that term is defined in section 3 of that Act).”.

16 (b) ASSUMPTION OF EXECUTORY CONTRACT.—Sec-
17 tion 365 of title 11, United States Code, is amended by
18 adding at the end the following:

19 “(p) If a debtor is a participant (as that term is de-
20 fined in section 3 of the Fairness in Asbestos Injury Reso-
21 lution Act of 2005), the trustee shall be deemed to have
22 assumed all executory contracts entered into by the partic-
23 ipant under section 204 of that Act. The trustee may not
24 reject any such executory contract.”.

1 (c) ALLOWED ADMINISTRATIVE EXPENSES.—Section
2 503 of title 11, United States Code, is amended by adding
3 at the end the following:

4 “(c)(1) Claims or expenses of the United States, the
5 Attorney General, or the Administrator (as that term is
6 defined in section 3 of the Fairness in Asbestos Injury
7 Resolution Act of 2005) based upon the asbestos payment
8 obligations of a debtor that is a Participant (as that term
9 is defined in section 3 of that Act), shall be paid as an
10 allowed administrative expense. The debtor shall not be
11 entitled to either notice or a hearing with respect to such
12 claims.

13 “(2) For purposes of paragraph (1), the term ‘asbes-
14 tos payment obligation’ means any payment obligation
15 under title II of the Fairness in Asbestos Injury Resolu-
16 tion Act of 2005.”.

17 (d) NO DISCHARGE.—Section 523 of title 11, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 “(f) A discharge under section 727, 1141, 1228, or
21 1328 of this title does not discharge any debtor that is
22 a participant (as that term is defined in section 3 of the
23 Fairness in Asbestos Injury Resolution Act of 2005) of
24 the debtor’s payment obligations assessed against the par-
25 ticipant under title II of that Act.”.

1 (e) PAYMENT.—Section 524 of title 11, United States
2 Code, is amended by adding at the end the following:

3 “(i) PARTICIPANT DEBTORS.—

4 “(1) IN GENERAL.—Paragraphs (2) and (3)
5 shall apply to a debtor who—

6 “(A) is a participant that has made prior
7 asbestos expenditures (as such terms are de-
8 fined in the Fairness in Asbestos Injury Resolu-
9 tion Act of 2005); and

10 “(B) is subject to a case under this title
11 that is pending—

12 “(i) on the date of enactment of the
13 Fairness in Asbestos Injury Resolution Act
14 of 2005; or

15 “(ii) at any time during the 1-year pe-
16 riod preceding the date of enactment of
17 that Act.

18 “(2) TIER I DEBTORS.—A debtor that has been
19 assigned to Tier I under section 202 of the Fairness
20 in Asbestos Injury Resolution Act of 2005, shall
21 make payments in accordance with sections 202 and
22 203 of that Act.

23 “(3) TREATMENT OF PAYMENT OBLIGA-
24 TIONS.—All payment obligations of a debtor under

1 sections 202 and 203 of the Fairness in Asbestos In-
2 jury Resolution Act of 2005 shall—

3 “(A) constitute costs and expenses of ad-
4 ministration of a case under section 503 of this
5 title;

6 “(B) notwithstanding any case pending
7 under this title, be payable in accordance with
8 section 202 of that Act;

9 “(C) not be stayed;

10 “(D) not be affected as to enforcement or
11 collection by any stay or injunction of any
12 court; and

13 “(E) not be impaired or discharged in any
14 current or future case under this title.”.

15 (f) TREATMENT OF TRUSTS.—Section 524 of title
16 11, United States Code, as amended by this Act, is
17 amended by adding at the end the following:

18 “(j) ASBESTOS TRUSTS.—

19 “(1) IN GENERAL.—A trust shall assign a por-
20 tion of the corpus of the trust to the Asbestos Injury
21 Claims Resolution Fund (referred to in this sub-
22 section as the ‘Fund’) as established under the Fair-
23 ness in Asbestos Injury Resolution Act of 2005 if
24 the trust qualifies as a ‘trust’ under section 201 of
25 that Act.

1 a trust for transferring assets to the Fund
2 in accordance with clause (i).

3 “(B) AUTHORITY TO REFUSE ASSETS.—

4 The Administrator of the Fund may refuse to
5 accept any asset that the Administrator deter-
6 mines may create liability for the Fund in ex-
7 cess of the value of the asset.

8 “(C) ALLOCATION OF TRUST ASSETS.—If

9 a trust under subparagraph (A) has bene-
10 ficiaries with claims that are not asbestos
11 claims, the assets transferred to the Fund
12 under subparagraph (A) shall not include assets
13 allocable to such beneficiaries. The trustees of
14 any such trust shall determine the amount of
15 such trust assets to be reserved for the con-
16 tinuing operation of the trust in processing and
17 paying claims that are not asbestos claims. The
18 trustees shall demonstrate to the satisfaction of
19 the Administrator, or by clear and convincing
20 evidence in a proceeding brought before the
21 United States District Court for the District of
22 Columbia in accordance with paragraph (4),
23 that the amount reserved is properly allocable
24 to claims other than asbestos claims.

1 “(D) SALE OF FUND ASSETS.—The invest-
2 ment requirements under section 222 of the
3 Fairness in Asbestos Injury Resolution Act of
4 2005 shall not be construed to require the Ad-
5 ministrators of the Fund to sell assets trans-
6 ferred to the Fund under subparagraph (A).

7 “(E) LIQUIDATED CLAIMS.—Except as
8 specifically provided in this subparagraph, all
9 asbestos claims against a trust are superseded
10 and preempted as of the date of enactment of
11 the Fairness in Asbestos Injury Resolution Act
12 of 2005, and a trust shall not make any pay-
13 ment relating to asbestos claims after that date.
14 If, in the ordinary course and the normal and
15 usual administration of the trust consistent
16 with past practices, a trust had before the date
17 of enactment of the Fairness in Asbestos Injury
18 Resolution Act of 2005, made all determina-
19 tions necessary to entitle an individual claimant
20 to a noncontingent cash payment from the
21 trust, the trust shall (i) make any lump-sum
22 cash payment due to that claimant, and (ii)
23 make or provide for all remaining noncontin-
24 gent payments on any award being paid or
25 scheduled to be paid on an installment basis, in

1 each case only to the same extent that the trust
2 would have made such cash payments in the or-
3 dinary course and consistent with past practices
4 before enactment of that Act. A trust shall not
5 make any payment in respect of any alleged
6 contingent right to recover any greater amount
7 than the trust had already paid, or had com-
8 pleted all determinations necessary to pay, to a
9 claimant in cash in accordance with its ordinary
10 distribution procedures in effect as of June 1,
11 2003.

12 “(3) INJUNCTION.—

13 “(A) IN GENERAL.—Any injunction issued
14 as part of the formation of a trust described in
15 paragraph (1) shall remain in full force and ef-
16 fect. No court, Federal or State, may enjoin the
17 transfer of assets by a trust to the Fund in ac-
18 cordance with this subsection pending resolu-
19 tion of any litigation challenging such transfer
20 or the validity of this subsection or of any pro-
21 vision of the Fairness in Asbestos Injury Reso-
22 lution Act of 2005, and an interlocutory order
23 denying such relief shall not be subject to im-
24 mediate appeal under section 1291(a) of title
25 28.

1 “(B) AVAILABILITY OF FUND ASSETS.—
2 Notwithstanding any other provision of law,
3 once such a transfer has been made, the assets
4 of the Fund shall be available to satisfy any
5 final judgment entered in such an action and
6 【such transfer shall】 no longer be subject to
7 any appeal or review—

8 “(i) declaring that the transfer ef-
9 fects a taking of a right or property for
10 which an individual is constitutionally enti-
11 tled to just compensation; or

12 “(ii) requiring the transfer back to a
13 trust of any or all assets transferred by
14 that trust to the Fund.

15 “(4) JURISDICTION.—Solely for purposes of im-
16 plementing this subsection, personal jurisdiction over
17 every covered trust, the trustees thereof, and any
18 other necessary party, and exclusive subject matter
19 jurisdiction over every question arising out of or re-
20 lated to this subsection, shall be vested in the United
21 States District Court for the District of Columbia.
22 Notwithstanding any other provision of law, includ-
23 ing section 1127 of this title, that court may make
24 any order necessary and appropriate to facilitate
25 prompt compliance with this subsection, including

1 assuming jurisdiction over and modifying, to the ex-
2 tent necessary, any applicable confirmation order or
3 other order with continuing and prospective applica-
4 tion to a covered trust. The court may also resolve
5 any related challenge to the constitutionality of this
6 subsection or of its application to any trust, trustee,
7 or individual claimant. The Administrator of the
8 Fund may bring an action seeking such an order or
9 modification, under the standards of rule 60(b) of
10 the Federal Rules of Civil Procedure or otherwise,
11 and shall be entitled to intervene as of right in any
12 action brought by any other party seeking interpre-
13 tation, application, or invalidation of this subsection.
14 Any order denying relief that would facilitate prompt
15 compliance with the transfer provisions of this sub-
16 section shall be subject to immediate appeal under
17 section 304 of the Fairness in Asbestos Injury Reso-
18 lution Act of 2005. Notwithstanding any other provi-
19 sion of this paragraph, for purposes of implementing
20 the sunset provisions of section 402(f) of such Act
21 which apply to asbestos trusts and the class action
22 trust, the bankruptcy court or United States district
23 court having jurisdiction over any such trust as of
24 the date of enactment of such Act shall retain such
25 jurisdiction.”.

1 (g) NO AVOIDANCE OF TRANSFER.—Section 546 of
2 title 11, United States Code, is amended by adding at the
3 end the following:

4 “(h) Notwithstanding the rights and powers of a
5 trustee under sections 544, 545, 547, 548, 549, and 550
6 of this title, if a debtor is a participant (as that term is
7 defined in section 3 of the Fairness in Asbestos Injury
8 Resolution Act of 2005), the trustee may not avoid a
9 transfer made by the debtor under its payment obligations
10 under section 202 or 203 of that Act.”.

11 (h) CONFIRMATION OF PLAN.—Section 1129(a) of
12 title 11, United States Code, is amended by adding at the
13 end the following:

14 “(14) If the debtor is a participant (as that
15 term is defined in section 3 of the Fairness in As-
16 bestos Injury Resolution Act of 2005), the plan pro-
17 vides for the continuation after its effective date of
18 payment of all payment obligations under title II of
19 that Act.”.

20 (i) EFFECT ON INSURANCE RECEIVERSHIP PRO-
21 CEEDINGS.—

22 (1) LIEN.—In an insurance receivership pro-
23 ceeding involving a direct insurer, reinsurer or run-
24 off participant, there shall be a lien in favor of the
25 Fund for the amount of any assessment and any

1 such lien shall be given priority over all other claims
2 against the participant in receivership, except for the
3 expenses of administration of the receivership and
4 the perfected claims of the secured creditors. Any
5 State law that provides for priorities inconsistent
6 with this provision is preempted by this Act.

7 (2) PAYMENT OF ASSESSMENT.—Payment of
8 any assessment required by this Act shall not be
9 subject to any automatic or judicially entered stay in
10 any insurance receivership proceeding. This Act shall
11 preempt any State law requiring that payments by
12 a direct insurer, reinsurer or runoff participant in
13 an insurance receivership proceeding be approved by
14 a court, receiver or other person. Payments of as-
15 sessments by any direct insurer or reinsurer partici-
16 pant under this Act shall not be subject to the avoid-
17 ance powers of a receiver or a court in or relating
18 to an insurance receivership proceeding.

19 “(j) STANDING IN BANKRUPTCY PROCEEDINGS.—
20 The Administrator shall have standing in any bankruptcy
21 case involving a debtor participant. No bankruptcy court
22 may require the Administrator to return property seized
23 to satisfy obligations to the Fund.”

1 **SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.**

2 (a) EFFECT ON FEDERAL AND STATE LAW.—The
3 provisions of this Act shall supersede any and all Federal
4 and State laws insofar as they may relate to any asbestos
5 claim, including any claim described in subsection (e)(2).

6 **[(b) AFFECT ON NON-ASBESTOS CLAIMS.—To be
7 supplied.]**

8 (c) SUPERSEDING PROVISIONS.—

9 (1) IN GENERAL.—Except as provided under
10 paragraph (3), any agreement, understanding, or
11 undertaking by any person or affiliated group with
12 respect to the treatment of any asbestos claim that
13 requires future performance by any party, insurer of
14 such party, settlement administrator, or escrow
15 agent shall be superseded in its entirety by this Act.

16 (2) NO FORCE OR EFFECT.—Except as pro-
17 vided under paragraph (3), any such agreement, un-
18 derstanding, or undertaking by any such person or
19 affiliated group shall be of no force or effect, and no
20 person shall have any rights or claims with respect
21 to any of the foregoing.

22 (3) EXCEPTION.—

23 (A) IN GENERAL.—Except as provided in
24 section 202(f), nothing in this Act shall abro-
25 gate a binding and legally enforceable written
26 settlement agreement between any defendant

1 participant or its insurer and a specific named
2 plaintiff with respect to the settlement of an as-
3 bestos claim of the plaintiff if—

4 (i) before the effective date of this
5 Act, the settlement agreement was exe-
6 cuted directly by the settling defendant or
7 the settling insurer and the individual
8 plaintiff, or on behalf of the plaintiff where
9 the plaintiff is incapacitated and the settle-
10 ment agreement is signed by an authorized
11 legal representative;

12 (ii) the settlement agreement contains
13 an express obligation by the settling de-
14 fendant or settling insurer to make a fu-
15 ture direct monetary payment or payments
16 in a fixed amount or amounts to the indi-
17 vidual plaintiff; or

18 (iii) within 60 days of the effective
19 date of this Act, all conditions to payment
20 under the settlement agreement have been
21 fulfilled, including any required court ap-
22 proval of the settlement, so that the only
23 remaining performance due under the set-
24 tlement agreement is the payment or pay-

1 ments by the settling defendant or the set-
2 tling insurer.

3 (B) BANKRUPTCY-RELATED AGREE-
4 MENTS.—The exception set forth in this para-
5 graph shall not apply to any bankruptcy-related
6 agreement.

7 (C) COLLATERAL SOURCE.—Any settle-
8 ment payment under this section is a collateral
9 source in the event the plaintiff seeks recovery
10 from the Fund.

11 (d) EXCLUSIVE REMEDY.—

12 (1) IN GENERAL.—Except as provided under
13 paragraph (2), the remedies provided under this Act
14 shall be the exclusive remedy for any asbestos claim,
15 including any claim described in subsection (e)(2),
16 under any Federal or State law.

17 (2) CIVIL ACTIONS AT TRIAL.—

18 (A) IN GENERAL.—This Act shall not
19 apply to any asbestos claim that—

20 (i) is a civil action filed in a Federal
21 or State court (not including a filing in a
22 bankruptcy court);

23 (ii) is not part of a consolidation of
24 actions or a class action; and

1 (iii) on the date of enactment of this
2 Act—

3 (I) in the case of a civil action
4 which includes a jury trial, is before
5 the jury after its impanelling and be-
6 fore its deliberations; and

7 (II) in the case of a civil action
8 which includes a trial in which a judge
9 is the trier of fact, is at the presen-
10 tation of evidence at trial.

11 (B) NONAPPLICABILITY.—This Act shall
12 not apply to a civil action described under sub-
13 paragraph (A) throughout the final disposition
14 of the action.

15 (e) BAR ON ASBESTOS CLAIMS.—

16 (1) IN GENERAL.—No asbestos claim, including
17 any claim described in paragraph (2), may be pur-
18 sued and no pending asbestos claim may be main-
19 tained in any Federal or State court, except for en-
20 forcement of any claim with respect to which, as of
21 the date of enactment of this Act, a verdict or final
22 order or judgment had been duly entered by a court
23 and was no longer subject to any appeal or judicial
24 review.

25 (2) CERTAIN SPECIFIED CLAIMS.—

1 (A) IN GENERAL.—Subject to section 404
2 (d) and (e)(3) of this Act, no claim may be
3 brought or pursued in any Federal or State
4 court or insurance receivership proceeding—

5 (i) relating to any default, confessed
6 or stipulated judgment on an asbestos
7 claim if the judgment debtor expressly
8 agreed, in writing or otherwise, not to con-
9 test the entry of judgment against it and
10 the plaintiff expressly agreed, in writing or
11 otherwise, to seek satisfaction of the judg-
12 ment only against insurers or in bank-
13 ruptcy;

14 (ii) relating to the defense, investiga-
15 tion, handling, litigation, settlement, or
16 payment of any asbestos claim by any par-
17 ticipant, including claims for bad faith or
18 unfair or deceptive claims handling or
19 breach of any duties of good faith; or

20 (iii) arising out of or relating to the
21 asbestos-related injury of any individual
22 and—

23 (I) asserting any conspiracy, con-
24 cert of action, aiding or abetting, act,
25 conduct, statement, misstatement, un-

1 dertaking, publication, omission, or
2 failure to detect, speak, disclose, pub-
3 lish, or warn relating to the presence
4 or health effects of asbestos or the
5 use, sale, distribution, manufacture,
6 production, development, inspection,
7 advertising, marketing, or installation
8 of asbestos; or

9 (II) asserting any conspiracy,
10 act, conduct, statement, omission, or
11 failure to detect, disclose, or warn re-
12 lating to the presence or health effects
13 of asbestos or the use, sale, distribu-
14 tion, manufacture, production, devel-
15 opment, inspection, advertising, mar-
16 keting, or installation of asbestos, as-
17 serted as or in a direct action against
18 an insurer or reinsurer based upon
19 any theory, statutory, contract, tort,
20 or otherwise; or

21 (iv) by any third party, and premised
22 on any theory, allegation, or cause of ac-
23 tion, for reimbursement of healthcare costs
24 allegedly associated with the use of or ex-

1 posure to asbestos, whether such claim is
2 asserted directly, indirectly or derivatively.

3 (B) EXCEPTIONS.—Subparagraph (A) (ii)
4 and (iii) shall not apply to claims against par-
5 ticipants by persons—

6 (i) with whom the participant is in
7 privity of contract;

8 (ii) who have received an assignment
9 of insurance rights not otherwise voided by
10 this Act; or

11 (iii) who are beneficiaries covered by
12 the express terms of a contract with that
13 participant.

14 (3) PREEMPTION.—Any action asserting an as-
15 bestos claim, including a claim described in para-
16 graph (2), in any Federal or State court, except for
17 any action with respect to which a verdict or final
18 order or judgment had been duly entered by a court
19 and was no longer subject to any appeal or judicial
20 review, is preempted by this Act.

21 (4) DISMISSAL.—No judgment other than a
22 judgment of dismissal may be entered in any such
23 action, including an action pending on appeal, or on
24 petition or motion for discretionary review, on or
25 after the date of enactment of this Act. A court may

1 dismiss any such action on its motion. If the court
2 denies the motion to dismiss, it shall stay further
3 proceedings until final disposition of any appeal
4 taken under this Act.

5 (5) REMOVAL.—

6 (A) IN GENERAL.—If an action in any
7 State court under paragraph (3) is not dis-
8 missed, or if an order entered after the date of
9 enactment of this Act purporting to enter judg-
10 ment or deny review is not rescinded and re-
11 placed with an order of dismissal within 30
12 days after the filing of a motion by any party
13 to the action advising the court of the provi-
14 sions of this Act, any party may remove the
15 case to the district court of the United States
16 for the district in which such action is pending.

17 (B) TIME LIMITS.—For actions originally
18 filed after the date of enactment of this Act, the
19 notice of removal shall be filed within the time
20 limits specified in section 1441(b) of title 28,
21 United States Code.

22 (C) PROCEDURES.—The procedures for re-
23 moval and proceedings after removal shall be in
24 accordance with sections 1446 through 1450 of
25 title 28, United States Code, except as may be

1 necessary to accommodate removal of any ac-
2 tions pending (including on appeal) on the date
3 of enactment of this Act.

4 (D) JURISDICTION.—The jurisdiction of
5 the district court shall be limited to—

6 (i) determining whether removal was
7 proper; and

8 (ii) determining whether the claim
9 presented is an asbestos claim as defined
10 by this Act.

11 (6) CREDITS.—If, notwithstanding the express
12 intent of Congress stated in this section, any court
13 finally determines for any reason that an asbestos
14 claim, including a claim described under paragraph
15 (2), for which, as of the date of enactment of this
16 Act, there had been no verdict or final order or judg-
17 ment duly entered by a court and no longer subject
18 to any appeal or review, is not subject to the exclu-
19 sive remedy or preemption provisions of this section,
20 then any participant required to satisfy a final judg-
21 ment executed with respect to any such claim may
22 elect to receive a credit against any assessment owed
23 to the Fund equal to the amount of the payment
24 made with respect to such executed judgment. The
25 Administrator shall require participants seeking

1 credit under this section to demonstrate that the
2 participant timely pursued all available remedies, in-
3 cluding remedies available under this section to ob-
4 tain dismissal of the claim, and that the participant
5 notified the Administrator at least 20 days before
6 the expiration of any period within which to appeal
7 the denial of a motion to dismiss based on this sec-
8 tion. The Administrator may require such partici-
9 pant to furnish such further information as is nec-
10 essary and appropriate to establish eligibility for and
11 the amount of the credits. The Administrator may
12 intervene in any action in which a credit may be due
13 under this section.

14 **SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CON-**
15 **TRACTS.**

16 (a) EROSION OF INSURANCE COVERAGE LIMITS.—

17 (1) DEFINITIONS.—In this section, the fol-
18 lowing definitions shall apply:

19 (A) DEEMED EROSION AMOUNT.—The
20 term “deemed erosion amount” means the
21 amount of erosion deemed to occur at enact-
22 ment under paragraph (2).

23 (B) EARLY SUNSET.—The term “early
24 sunset” means an event causing termination of
25 the program under section 405(f) which relieves

1 the insurer participants of paying some portion
 2 of the aggregate payment level of **【To be sup-**
 3 **plied】** required in section 212(a)(2)(A).

4 (C) **EARNED EROSION AMOUNT.**—The
 5 term “earned erosion amount” means, in the
 6 event of any early sunset under section 405(f),
 7 the percentage, as set forth in the following
 8 schedule, depending on the year in which the
 9 defendant participants’ funding obligations end,
 10 of those amounts which, at the time of the early
 11 sunset, a defendant participant has paid to the
 12 fund and remains obligated to pay into the
 13 fund.

Year After Enactment In Which Defendant Participant’s Funding Obligation Ends:	Applicable Percentage:
10	70.78
11	68.75
12	67.06
13	65.63
14	64.40
15	63.33
16	62.40
17	61.58
18	60.39
19	59.33
20	58.38
21	57.51
22	56.36
23	55.31
24	56.71
25	58.11
26	59.51

14 (D) **REMAINING AGGREGATE PRODUCTS**
 15 **LIMITS.**—The term “remaining aggregate prod-
 16 ucts limits” means aggregate limits that apply

1 to insurance coverage granted under the “prod-
2 ucts hazard”, “completed operations hazard”,
3 or “Products—Completed Operations Liability”
4 in any comprehensive general liability policy
5 issued between calendar years 1940 and 1986
6 to cover injury which occurs in any State, as re-
7 duced by—

8 (i) any existing impairment of such
9 aggregate limits as of the date of enact-
10 ment of this Act; and

11 (ii) the resolution of claims for reim-
12 bursement or coverage of liability or paid
13 or incurred loss for which notice was pro-
14 vided to the insurer before the date of en-
15 actment of this Act.

16 (E) SCHEDULED PAYMENT AMOUNTS.—

17 The term “scheduled payment amounts” means
18 the future payment obligation to the Fund
19 under this Act from a defendant participant in
20 the amount established under sections 203 and
21 204.

22 (F) UNEARNED EROSION AMOUNT.—The
23 term “unearned erosion amount” means, in the
24 event of any early sunset under section 405(f),

1 the difference between the deemed erosion
2 amount and the earned erosion amount.

3 (2) QUANTUM AND TIMING OF EROSION.—

4 (A) EROSION UPON ENACTMENT.—The
5 collective payment obligations to the Fund of
6 the insurer and reinsurer participants as as-
7 sessed by the Administrator shall be deemed as
8 of the date of enactment of this Act to erode re-
9 maining aggregate products limits available to a
10 defendant participant only in an amount of
11 59.64 percent of each defendant participant's
12 scheduled payment amount.

13 (B) NO ASSERTION OF CLAIM.—No insurer
14 or reinsurer may assert any claim against a de-
15 fendant participant or captive insurer for insur-
16 ance, reinsurance, payment of a deductible, or
17 retrospective premium adjustment arising out
18 of that insurer's or reinsurer's payments to the
19 Fund or the erosion deemed to occur under this
20 section.

21 (C) POLICIES WITHOUT CERTAIN LIMITS
22 OR WITH EXCLUSION.—Except as provided
23 under subparagraph (E), nothing in this section
24 shall require or permit the erosion of any insur-
25 ance policy or limit that does not contain an ag-

1 gregate products limit, or that contains an as-
2 bestos exclusion.

3 (D) TREATMENT OF CONSOLIDATION
4 ELECTION.—If an affiliated group elects con-
5 solidation as provided in section 204(f), the
6 total erosion of limits for the affiliated group
7 under paragraph (2)(A) shall not exceed 59.64
8 percent of the scheduled payment amount of
9 the single payment obligation for the entire af-
10 filiated group. The total erosion of limits for
11 any individual defendant participant in the af-
12 filiated group shall not exceed its individual
13 share of 59.64 percent of the affiliated group’s
14 scheduled payment amount, as measured by the
15 individual defendant participant’s percentage
16 share of the affiliated group’s prior asbestos ex-
17 penditures.

18 (E) RULE OF CONSTRUCTION.—Notwith-
19 standing any other provision of this section,
20 nothing in this Act shall be deemed to erode re-
21 maining aggregate products limits of a defend-
22 ant participant that can demonstrate by a pre-
23 ponderance of the evidence that 75 percent of
24 its prior asbestos expenditures were made in de-
25 fense or satisfaction of asbestos claims alleging

1 bodily injury arising exclusively from the expo-
2 sure to asbestos at premises owned, rented, or
3 controlled by the defendant participant (a
4 “premises defendant”). In calculating such per-
5 centage, where expenditures were made in de-
6 fense or satisfaction of asbestos claims alleging
7 bodily injury due to exposure to the defendant
8 participant’s products and to asbestos at prem-
9 ises owned, rented, or controlled by the defend-
10 ant participant, half of such expenditures shall
11 be deemed to be for such premises exposures.
12 In the event that a defendant participant estab-
13 lishes itself as a premises defendant, 75 percent
14 of the payments by such defendant participant
15 shall erode coverage limits, if any, applicable to
16 premises liabilities under applicable law.

17 (3) METHOD OF EROSION.—

18 (A) ALLOCATION.—The amount of erosion
19 allocated to each defendant participant shall be
20 allocated among periods in which policies with
21 remaining aggregate product limits are avail-
22 able to that defendant participant pro rata by
23 policy period, in ascending order by attachment
24 point.

25 (B) OTHER EROSION METHODS.—

1 (i) IN GENERAL.—Notwithstanding
2 subparagraph (A), the method of erosion
3 of any remaining aggregate products limits
4 which are subject to—

5 (I) a coverage-in-place or settle-
6 ment agreement between a defendant
7 participant and 1 or more insurance
8 participants as of the date of enact-
9 ment; or

10 (II) a final and nonappealable
11 judgment as of the date of enactment
12 or resulting from a claim for coverage
13 or reimbursement pending as of such
14 date, shall be as specified in such
15 agreement or judgment with regard to
16 erosion applicable to such insurance
17 participants' policies.

18 (ii) REMAINING LIMITS.—To the ex-
19 tent that a final nonappealable judgment
20 or settlement agreement to which an in-
21 surer participant and a defendant partici-
22 pant are parties in effect as of the date of
23 enactment of this Act extinguished a de-
24 fendant participant's right to seek coverage
25 for asbestos claims under an insurer par-

1 participant's policies, any remaining limits in
2 such policies shall not be considered to be
3 remaining aggregate products limits under
4 subsection (a)(1)(A).

5 (4) RESTORATION OF AGGREGATE PRODUCTS
6 LIMITS UPON EARLY SUNSET.—

7 (A) RESTORATION.—In the event of an
8 early sunset, any unearned erosion amount will
9 be deemed restored as aggregate products limits
10 available to a defendant participant as of the
11 date of enactment.

12 (B) METHOD OF RESTORATION.—The un-
13 earned erosion amount will be deemed restored
14 to each defendant participant's policies in such
15 a manner that the last limits that were deemed
16 eroded at enactment under this subsection are
17 deemed to be the first limits restored upon
18 early sunset.

19 (C) TOLLING OF COVERAGE CLAIMS.—In
20 the event of an early sunset, the applicable stat-
21 ute of limitations and contractual provisions for
22 the filing of claims under any insurance policy
23 with restored aggregate products limits shall be
24 deemed tolled after the date of enactment

1 through the date 6 months after the date of
2 early sunset.

3 (5) PAYMENTS BY DEFENDANT PARTICIPANT.—

4 Payments made by a defendant participant shall be
5 deemed to erode, exhaust, or otherwise satisfy appli-
6 cable self-insured retentions, deductibles, retrospec-
7 tively rated premiums, and limits issued by non-
8 participating insolvent or captive insurance compa-
9 nies. Reduction of remaining aggregate limits under
10 this subsection shall not limit the right of a defend-
11 ant participant to collect from any insurer not a par-
12 ticipant.

13 (6) EFFECT ON OTHER INSURANCE CLAIMS.—

14 Other than as specified in this subsection, this Act
15 does not alter, change, modify, or affect insurance
16 for claims other than asbestos claims.

17 (b) DISPUTE RESOLUTION PROCEDURE.—

18 (1) ARBITRATION.—The parties to a dispute re-
19 garding the erosion of insurance coverage limits
20 under this section may agree in writing to settle
21 such dispute by arbitration. Any such provision or
22 agreement shall be valid, irrevocable, and enforce-
23 able, except for any grounds that exist at law or in
24 equity for revocation of a contract.

1 (2) TITLE 9, UNITED STATES CODE.—Arbitra-
2 tion of such disputes, awards by arbitrators, and
3 confirmation of awards shall be governed by title 9,
4 United States Code, to the extent such title is not
5 inconsistent with this section. In any such arbitra-
6 tion proceeding, the erosion principles provided for
7 under this section shall be binding on the arbitrator,
8 unless the parties agree to the contrary.

9 (3) FINAL AND BINDING AWARD.—An award by
10 an arbitrator shall be final and binding between the
11 parties to the arbitration, but shall have no force or
12 effect on any other person. The parties to an arbitra-
13 tion may agree that in the event a policy which
14 is the subject matter of an award is subsequently de-
15 termined to be eroded in a manner different from
16 the manner determined by the arbitration in a judg-
17 ment rendered by a court of competent jurisdiction
18 from which no appeal can or has been taken, such
19 arbitration award may be modified by any court of
20 competent jurisdiction upon application by any party
21 to the arbitration. Any such modification shall gov-
22 ern the rights and obligations between such parties
23 after the date of such modification.

24 (c) EFFECT ON NONPARTICIPANTS.—

1 (1) IN GENERAL.—No insurance company or
2 reinsurance company that is not a participant, other
3 than a captive insurer, shall be entitled to claim that
4 payments to the Fund erode, exhaust, or otherwise
5 limit the nonparticipant’s insurance or reinsurance
6 obligations.

7 (2) OTHER CLAIMS.—Nothing in this Act shall
8 preclude a participant from pursuing any claim for
9 insurance or reinsurance from any person that is not
10 a participant other than a captive insurer.

11 (d) FINITE RISK POLICIES NOT AFFECTED.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of this Act, this Act shall not alter, affect
14 or impair any rights or obligations of—

15 (A) any party to an insurance contract
16 that expressly provides coverage for govern-
17 mental charges or assessments imposed to re-
18 place insurance or reinsurance liabilities in ef-
19 fect on the date of enactment of this Act; or

20 (B) subject to paragraph (2), any person
21 with respect to any insurance or reinsurance
22 purchased by a participant after December 31,
23 1996, that expressly (but not necessarily exclu-
24 sively) provides coverage for asbestos liabilities,

1 including those policies commonly referred to as
2 “finite risk” policies.

3 (2) LIMITATION.—No person may assert that
4 any amounts paid to the Fund in accordance with
5 this Act are covered by any policy described under
6 paragraph (1)(B) purchased by a defendant partici-
7 pant, unless such policy specifically provides cov-
8 erage for required payments to a Federal trust fund
9 established by a Federal statute to resolve asbestos
10 injury claims.

11 (e) EFFECT ON CERTAIN INSURANCE AND REINSUR-
12 ANCE CLAIMS.—

13 (1) NO COVERAGE FOR FUND ASSESSMENTS.—
14 No participant or captive insurer may pursue an in-
15 surance or reinsurance claim against another partici-
16 pant or captive insurer for payments to the Fund re-
17 quired under this Act, except under a contract spe-
18 cifically providing insurance or reinsurance for re-
19 quired payments to a Federal trust fund established
20 by a Federal statute to resolve asbestos injury
21 claims or, where applicable, under finite risk policies
22 under subsection (d).

23 (2) CERTAIN INSURANCE ASSIGNMENTS VOID-
24 ED.—Any assignment of any rights to insurance cov-
25 erage for asbestos claims to any person who has as-

1 serted an asbestos claim before the effective date, or
2 to any trust, person, or other entity not part of an
3 affiliated group as defined in section 201(1) of this
4 Act established or appointed for the purpose of pay-
5 ing asbestos claims which were asserted before the
6 effective date, or by any Tier I defendant partici-
7 pant, before any sunset of this Act, shall be null and
8 void. This subsection shall not void or affect in any
9 way any assignments of rights to insurance coverage
10 other than to asbestos claimants or to trusts, per-
11 sons, or other entities not part of an affiliated group
12 as defined in section 201(1) of this Act established
13 or appointed for the purpose of paying asbestos
14 claims, or by Tier I defendant participants.

15 (3) INSURANCE CLAIMS PRESERVED.—Notwith-
16 standing any other provision of this Act, this Act
17 shall not alter, affect, or impair any rights or obliga-
18 tions of any person with respect to any insurance or
19 reinsurance for amounts that any person pays, has
20 paid, or becomes legally obligated to pay in respect
21 of asbestos or other claims, except to the extent
22 that—

23 (A) such person pays or becomes legally
24 obligated to pay claims that are superseded by
25 section 403 of this Act;

1 (B) any such rights or obligations of such
2 person with respect to insurance or reinsurance
3 are prohibited by paragraph (1) or (2) of sub-
4 section (e); or

5 (C) the limits of insurance otherwise avail-
6 able to such participant in respect of asbestos
7 claims are deemed to be eroded under sub-
8 section (a) of this section.

9 **SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR.**

10 (a) IN GENERAL.—The Administrator shall submit
11 an annual report to the Committee on the Judiciary of
12 the Senate and the Committee on the Judiciary of the
13 House of Representatives on the operation of the Asbestos
14 Injury Claims Resolution Fund within 6 months after the
15 close of each fiscal year.

16 (b) CONTENTS OF REPORT.—The annual report sub-
17 mitted under this subsection shall include—

18 (1) a summary of the claims made during the
19 most recent fiscal year, including—

20 (A) the number of claims made to the Of-
21 fice and a description of the types of medical
22 diagnoses and asbestos exposure underlying
23 those claims; and

24 (B) the number of claims denied by the
25 Office and a description of the types of medical

1 diagnoses and asbestos exposures underlying
2 those claims, and a general description of the
3 reasons for their denial;

4 (2) a summary of the eligibility determinations
5 made by the Office under section 114;

6 (3) a summary of the awards made from the
7 Fund, including the amount of the awards;

8 (4) an analysis of the financial condition of the
9 Fund, including an estimation of the Fund's ability
10 to pay claims for the subsequent 5 years in full as
11 and when required, an evaluation of the Fund's abil-
12 ity to retire its existing debt and assume additional
13 debt, and an evaluation of the Fund's ability to sat-
14 isfy other obligations under the program;

15 (5) a statement of the percentage of asbestos
16 claimants who filed claims during the prior calendar
17 year and were determined to be eligible to receive
18 compensation under this Act, who have received the
19 compensation to which they are entitled according to
20 section 133 for each level;

21 (6) the identity of all participants and a sum-
22 mary of the funding allocations of each participant,
23 including the amounts of all payments to the Fund;

24 (7) a summary of all financial hardship or in-
25 equity adjustments applied for during the fiscal

1 year, and a summary of the adjustments that were
2 made during the fiscal year;

3 (8) a summary of the investments made under
4 section 222(b);

5 (9) a summary of all referrals made to law en-
6 forcement authorities under section 408 and of any
7 legal actions brought or penalties imposed under sec-
8 tion 223;

9 (10) an estimate of the number and types of
10 claims, the amount of awards, and the participant
11 payment obligations for the next fiscal year;

12 (11) any recommendations from the Advisory
13 Committee on Asbestos Disease Compensation and
14 the Medical Advisory Committee of the Fund to im-
15 prove the diagnostic, exposure, and medical criteria
16 so as to pay only those claimants whose injuries are
17 caused by exposure to asbestos;

18 (12) a summary of the results of audits con-
19 ducted under section 115; and

20 (13) a summary of prosecutions under section
21 1348 of title 18, United States Code (as added by
22 this Act).

23 (c) CLAIMS ANALYSIS.—If the Administrator con-
24 cludes, on the basis of the annual report submitted under
25 this section, that the Fund is compensating claims for in-

1 juries that are not caused by exposure to asbestos and
2 compensating such claims may, currently or in the future,
3 undermine the Fund's ability to compensate persons with
4 injuries that are caused by exposure to asbestos, the Ad-
5 ministrator must include in the report an analysis of the
6 reasons for the situation, a description of the range of rea-
7 sonable alternatives for responding to the situation, and
8 a recommendation as to which alternative best serves the
9 interest of claimants and the public. The report may in-
10 clude a description of changes in the diagnostic, exposure,
11 or medical criteria of section 121 that the Administrator
12 believes may be necessary to protect the Fund from com-
13 pensating claims not caused by exposure to asbestos.

14 (d) SHORTFALL ANALYSIS.—

15 (1) IN GENERAL.—If the Administrator con-
16 cludes, on the basis of the information contained in
17 the annual report submitted under this section, that
18 the Fund may not be able to pay claims as they be-
19 come due at any time within the next 5 years, the
20 Administrator must include in the report an analysis
21 of the reasons for the situation, an estimation of
22 when the Fund will no longer be able to pay claims
23 as they become due, a description of the range of
24 reasonable alternatives for responding to the situa-
25 tion, and a recommendation as to which alternative

1 best serves the interest of claimants and the public.
2 The report may include a description of changes in
3 the diagnostic, exposure, or medical criteria of sec-
4 tion 121 that the Administrator believes may be nec-
5 essary to protect the Fund. The range of alter-
6 natives may include—

7 (A) triggering the termination of this Act
8 under subsection (f) at any time after the date
9 of enactment of this Act; and

10 (B) reform of the program set forth in ti-
11 tles I and II of this Act (including changes in
12 the diagnostic, exposure, or medical criteria,
13 changes in the enforcement or application of
14 those criteria, changes in the timing of pay-
15 ments, or changes in award values).

16 (2) CONSIDERATIONS.—In formulating rec-
17 ommendations, the Administrator shall take into ac-
18 count the reasons for any shortfall, actual or pro-
19 jected, which may include—

20 (A) financial factors (such as inadequate
21 return on investments);

22 (B) the operation of the Fund generally
23 (including the operation of the diagnostic, expo-
24 sure and medical criteria, potential problems of
25 fraud, the adequacy of the criteria to rule out

1 idiopathic mesothelioma, and inadequate flexi-
2 bility to extend the timing of payments);

3 (C) the actual incidence of diseases such as
4 mesothelioma;

5 (D) compensation of diseases with alter-
6 native causes; and

7 (E) any other factor that the Adminis-
8 trator considers relevant.

9 (3) RECOMMENDATION OF TERMINATION.—Any
10 recommendation of termination should include a
11 plan for winding up the affairs of the Fund (and the
12 program generally) within a defined period, includ-
13 ing paying in full all claims resolved at the time the
14 report is prepared.

15 (4) RESOLVED CLAIMS.—For purposes of this
16 section, a claim shall be deemed resolved when the
17 Administrator has determined the amount of the
18 award due the claimant, and either the claimant has
19 waived judicial review or the time for judicial review
20 has expired.

21 (e) RECOMMENDATIONS OF ADMINISTRATOR AND
22 COMMISSION.—

23 (1) IN GENERAL.—If the Administrator rec-
24 ommends changes to this Act under subsection (e),
25 the recommendations and accompanying analysis

1 shall be referred to a special commission consisting
2 of the Attorney General, the Secretary of Labor, the
3 Secretary of Health and Human Services, the Sec-
4 retary of the Treasury, and the Secretary of Com-
5 merce, or their designees. The Commission shall
6 hold public hearings on the Administrator's alter-
7 natives and recommendations and then make its own
8 recommendations for reform of the program set
9 forth in titles I and II of this Act. Within 180 days
10 after receiving the Administrator's recommenda-
11 tions, the Commission shall transmit its own rec-
12 ommendations to the Congress in the same manner
13 as set forth in subsection (a).

14 (2) REFERRAL.—If the Administrator rec-
15 ommends changes to, or termination of, this Act
16 under subsection (d), the recommendations and ac-
17 companying analysis shall be referred to the Com-
18 mission. The Commission shall hold public hearings
19 on the Administrator's alternatives and rec-
20 ommendations and then make its own recommenda-
21 tions for reform of the program set forth in titles I
22 and II of this Act. Within 180 days after receiving
23 the Administrator's recommendations, the Commis-
24 sion shall transmit its own recommendations to Con-

1 gress in the same manner as set forth in subsection
2 (a).

3 (f) SUNSET OF ACT.—

4 (1) IN GENERAL.—Subject to paragraph (4), ti-
5 tles I (except subtitle A) and II and sections 403
6 and 404(e)(2) shall terminate as provided under
7 paragraph (2), if the Administrator—

8 (A) has begun the processing of claims;

9 (B) conducts a review of the operations of
10 the Fund similar to a review conducted to pre-
11 pare an annual report under this section; and

12 (C) determines that if any additional
13 claims are resolved, the Fund will not have suf-
14 ficient resources when needed to pay 100 per-
15 cent of all resolved claims while also meeting all
16 other obligations of the Fund under this Act,
17 including the payment of—

18 (i) debt repayment obligations; and

19 (ii) remaining obligations to the as-
20 bestos trust of a debtor and the class ac-
21 tion trust.

22 For purposes of subparagraph (C), the remaining
23 obligations to the asbestos trust of the debtor and
24 the class action trust shall be determined by assum-
25 ing that, instead of a lump-sum payment, such

1 trusts had transferred their respective assets to the
2 Fund equally over each of the [_____] annual pay-
3 ment cycles (except that a proportionate adjustment
4 shall be made by the Administrator to reflect the up-
5 front funding obligation of defendant participants
6 under section [_____]).

7 (2) EFFECTIVE DATE OF TERMINATION.—A
8 termination under paragraph (1) shall take effect
9 180 days after the date of a determination of the
10 Administrator under paragraph (1) and shall apply
11 to all asbestos claims that have not been resolved by
12 the Fund as of the date of the determination.

13 (3) RESOLVED CLAIMS.—If a termination takes
14 effect under this subsection, all resolved claims shall
15 be paid in full by the Fund.

16 (4) EXTINGUISHED CLAIMS.—A claim that is
17 extinguished under the statute of limitations provi-
18 sions in section 113(b) or preempted under section
19 403(e)(2) is not revived at the time of sunset under
20 this subsection.

21 (5) CONTINUED FUNDING.—If a termination
22 takes effect under this subsection, participants will
23 still be required to make payments as provided
24 under subtitles A and B of title II. If the full
25 amount of payments required by title II is not nec-

1 necessary for the Fund to pay claims that have been re-
2 solved as of the date of termination, pay the Fund's
3 debt and obligations to the asbestos trusts and class
4 action trust, and support the Fund's continued oper-
5 ation as needed to pay such claims, debt, and obliga-
6 tions, the Administrator may reduce such payments.
7 Any such reductions shall be allocated among par-
8 ticipants in approximately the same proportion as
9 the liability under subtitles A and B of title II.

10 (6) SUNSET CLAIMS.—

11 (A) DEFINITIONS.—In this paragraph—

12 (i) the term “sunset claims” means
13 claims as to which this Act has terminated;
14 and

15 (ii) the term “sunset claimants”
16 means persons asserting sunset claims.

17 (B) IN GENERAL.—If a termination takes
18 effect under this subsection, the applicable stat-
19 ute of limitations for the filing of sunset claims
20 under subsection (g) shall be deemed tolled for
21 any past or pending sunset claimants while they
22 were pursuing claims filed under this Act. For
23 those claimants who decide to pursue a sunset
24 claim in accordance with subsection (g), the ap-
25 plicable statute of limitations shall apply, except

1 that claimants who filed a claim against the
2 Fund under this Act before the date of termi-
3 nation shall have 2 years after the date of ter-
4 mination to file a sunset claim in accordance
5 with subsection (g), whichever is longer.

6 (7) ASBESTOS TRUSTS AND CLASS ACTION
7 TRUST.—On and after the date of termination under
8 this subsection, the trust distribution program of
9 any asbestos trust and the class action trust shall be
10 replaced with the medical criteria requirements of
11 section 121.

12 (8) PAYMENT TO ASBESTOS TRUSTS AND CLASS
13 ACTION TRUST.—The amounts determined under
14 paragraph (1)(C) for payment to the asbestos trusts
15 and the class action trust shall be transferred to the
16 respective asbestos trusts of the debtor and the class
17 action trust within 90 days.

18 (g) NATURE OF CLAIM AFTER SUNSET.—

19 (1) IN GENERAL.—On and after the date of ter-
20 mination under subsection (f), any individual injured
21 as a result of exposure to asbestos, who has not pre-
22 viously had a claim resolved by the Fund, may in a
23 civil action obtain relief in damages subject to the
24 terms and conditions under this subsection and
25 paragraph (6) of subsection (f), except—

1 (A) an individual who received an award
2 for a nonmalignant disease (Levels I through
3 V) from the Fund may assert a claim for a ma-
4 lignant disease under this subsection, unless the
5 malignancy was diagnosed or the claimant had
6 discovered facts that would have led a reason-
7 able person to obtain such a diagnosis before
8 the date on which the nonmalignant claim was
9 settled; and

10 (B) an individual who received an award
11 for a nonmalignant or malignant disease (ex-
12 cept mesothelioma) (Levels I through IX) from
13 the Fund may assert a claim for mesothelioma
14 under this subsection, unless the mesothelioma
15 was diagnosed or the claimant had discovered
16 facts that would have led a reasonable person to
17 obtain such a diagnosis before the date on
18 which the nonmalignant or other malignant
19 claim was settled.

20 (2) EXCLUSIVE REMEDY.—As of the effective
21 date of a termination of this Act under subsection
22 (f), an action under paragraph (1) shall be the ex-
23 clusive remedy for any asbestos claim that might
24 otherwise exist under Federal, State, or other law,
25 regardless of whether such claim arose before or

1 after the effective date of this Act or of the termi-
2 nation of this Act, except that claims against the
3 Fund that have been resolved before the date of the
4 termination determination under subsection (f) may
5 be paid by the Fund.

6 (3) VENUE.—

7 (A) IN GENERAL.—Actions under para-
8 graph (1) may be brought in—

9 (i) any Federal district court;

10 (ii) any State court in the State where
11 the claimant resides; or

12 (iii) any State court in a State where
13 the asbestos-related injury is alleged to
14 have arisen.

15 (B) DEFENDANTS NOT FOUND.—If any
16 defendant cannot be found in the State de-
17 scribed in clause (ii) or (iii) of subparagraph
18 (A), the claim may be pursued only against that
19 defendant in the Federal district court or the
20 State court located within any State in which
21 the defendant may be found.

22 (C) DETERMINATION OF MOST APPRO-
23 PRIATE FORUM.—If a person alleges that the
24 asbestos-related injury occurred in more than
25 one county (or Federal district), the trial court

1 shall determine which State and county (or
2 Federal district) is the most appropriate forum
3 for the claim. If the court determines that an-
4 other forum would be the most appropriate
5 forum for a claim, the court shall dismiss the
6 claim. Any otherwise applicable statute of limi-
7 tations shall be tolled beginning on the date the
8 claim was filed and ending on the date the
9 claim is dismissed under this subparagraph.

10 (4) APPLICABLE LAW.—Notwithstanding any
11 other provision of this section, so long as the assets
12 of any class action trust have been transferred to
13 the Fund in accordance with section 203(b)(5), no
14 sunset claim may be maintained in respect of asbes-
15 tos liabilities arising from the operations of a person
16 in respect of whose liabilities for asbestos claims a
17 class action trust has been established, whether such
18 claim names the person or its successors or affiliates
19 as defendants. Instead, if a termination takes effect
20 under this subsection, the Administrator shall con-
21 tinue to use any available amounts in the Fund to
22 pay asbestos claims, if necessary in proportionally
23 reduced amounts, arising from the operations of a
24 person in respect of whose liabilities for asbestos
25 claims a class action trust has been established.

1 (h) LEVEL VII CLAIMS.—

2 (1) MONITORING CLAIMS.—In each fiscal year,
3 the Administrator shall monitor the number of
4 claims of smokers and ex-smokers filed with the Of-
5 fice for Level VII asbestos-related disease and com-
6 pare such number with the most recent projection of
7 the Congressional Budget Office before the date of
8 enactment of this Act.

9 (2) ANALYSIS, ESTIMATES, AND ALTERNATIVE
10 ACTIONS.—If the Administrator estimates that in
11 the next fiscal year the number of claims of smokers
12 and ex-smokers filed with the Office over the pre-
13 ceding 3 years may exceed the most recent projec-
14 tion of the Congressional Budget Office before the
15 date of enactment of this Act by 15 percent, the Ad-
16 ministrator shall—

17 (A) conduct an analysis of the reasons for
18 the results of the estimation;

19 (B) estimate whether that number will ex-
20 ceed the projection by 15 percent or more in
21 subsequent fiscal years; and

22 (C) provide a range of reasonable alter-
23 natives of actions which best serve the interests
24 of claimants and the public that the Adminis-
25 trator, Congress, or other authorities may take

1 to provide for that number not to exceed the
2 projection by 15 percent or more.

3 (3) SUNSET OF CLAIMS.—If in any fiscal year
4 the Administrator determines that the number of
5 claims of smokers and ex-smokers filed with the Of-
6 fice over the preceding 3 years for Level VII asbes-
7 tos-related disease exceed the most recent projection
8 of the Congressional Budget Office before the date
9 of enactment of this Act by 15 percent, the Adminis-
10 trator shall take actions from the alternatives de-
11 scribed under paragraph (2)(C) to reduce that num-
12 ber to not exceed 15 percent of that projection. If
13 after taking such actions, the Administrator deter-
14 mines that such number will continue to exceed 15
15 percent of that projection, such claims shall be treat-
16 ed as if this Act had ceased to be effective under
17 subsection (f).

18 (4) NEW CLAIMS FILED AFTER SUNSET.—

19 (A) VENUE.—If this Act ceases to be effec-
20 tive with respect to Level VII claims of smokers
21 and ex-smokers under paragraph (3)—

22 (i) any actions shall be brought only
23 in the Federal district court located
24 within—

1 (I) the State of residence of the
2 claimant; or

3 (II) the State in which the asbes-
4 tos-related injury arose; or

5 (ii) if any defendant cannot be found
6 in the State described in subclause (I) or
7 (II) of clause (i), the claim may be pursued
8 against that defendant only in the Federal
9 district court or the State court located
10 within any State in which the defendant
11 may be found.

12 (B) DETERMINATION OF MOST APPRO-
13 PRIATE FORUM.—If a person alleges that the
14 asbestos-related injury occurred in more than
15 one Federal district, the trial court shall deter-
16 mine which Federal district is the most appro-
17 priate forum for the claim. If the court deter-
18 mines that another forum would be the most
19 appropriate forum for a claim, the court shall
20 dismiss the claim. Any otherwise applicable
21 statute of limitations shall be tolled beginning
22 on the date the claim was filed and ending on
23 the date the claim is dismissed under this sub-
24 paragraph.

1 (C) APPLICABLE LAW.—An action under
2 subparagraph (A) shall be governed by Federal
3 common law, except that where national uni-
4 formity is not required the court must utilize
5 otherwise applicable State law, including stat-
6 utes, to provide the appropriate rule of Federal
7 common law.

8 (D) SUNSET OF ACT.—Notwithstanding
9 subparagraph (A), in the event that this Act
10 terminates as provided in subsection (f), all civil
11 actions filed after the effective date of such ter-
12 mination shall be governed by subsection (g).

13 **SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABIL-**
14 **ITY OF THE UNITED STATES GOVERNMENT.**

15 (a) CAUSES OF ACTIONS.—Except as otherwise spe-
16 cifically provided in this Act, nothing in this Act may be
17 construed as creating a cause of action against the United
18 States Government, any entity established under this Act,
19 or any officer or employee of the United States Govern-
20 ment or such entity.

21 (b) FUNDING LIABILITY.—Nothing in this Act may
22 be construed to—

23 (1) create any obligation of funding from the
24 United States Government, other than the funding

1 for personnel and support as provided under this
2 Act; or

3 (2) obligate the United States Government to
4 pay any award or part of an award, if amounts in
5 the Fund are inadequate.

6 **SEC. 407. RULES OF CONSTRUCTION.**

7 (a) LIBBY, MONTANA CLAIMANTS.—Nothing in this
8 Act shall preclude the formation of a fund for the payment
9 of eligible medical expenses related to treating asbestos-
10 related disease for current and former residents of Libby,
11 Montana.

12 (b) HEALTHCARE FROM PROVIDER OF CHOICE.—
13 Nothing in this Act shall be construed to preclude any eli-
14 gible claimant from receiving healthcare from the provider
15 of their choice.

16 **SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND**
17 **SAFETY REQUIREMENTS.**

18 (a) ASBESTOS IN COMMERCE.—If the Administrator
19 receives information concerning conduct occurring after
20 the date of enactment of this Act that may have been a
21 violation of standards issued by the Environmental Protec-
22 tion Agency under the Toxic Substances Control Act (15
23 U.S.C. 2601 et seq.), relating to the manufacture, impor-
24 tation, processing, disposal, and distribution in commerce
25 of asbestos-containing products, the Administrator shall

1 refer the matter in writing within 30 days after receiving
2 that information to the Administrator of the Environ-
3 mental Protection Agency and the United States Attorney
4 for possible civil or criminal penalties, including those
5 under section 17 of the Toxic Substances Control Act (15
6 U.S.C. 2616), and to the appropriate State authority with
7 jurisdiction to investigate asbestos matters.

8 (b) ASBESTOS AS AIR POLLUTANT.—If the Adminis-
9 trator receives information concerning conduct occurring
10 after the date of enactment of this Act that may have been
11 a violation of standards issued by the Environmental Pro-
12 tection Agency under the Clean Air Act (42 U.S.C. 7401
13 et seq.), relating to asbestos as a hazardous air pollutant,
14 the Administrator shall refer the matter in writing within
15 30 days after receiving that information to the Adminis-
16 trator of the Environmental Protection Agency and the
17 United States Attorney for possible criminal and civil pen-
18 alties, including those under section 113 of the Clean Air
19 Act (42 U.S.C. 7413), and to the appropriate State au-
20 thority with jurisdiction to investigate asbestos matters.

21 (c) OCCUPATIONAL EXPOSURE.—If the Adminis-
22 trator receives information concerning conduct occurring
23 after the date of enactment of this Act that may have been
24 a violation of standards issued by the Occupational Safety
25 and Health Administration under the Occupational Safety

1 and Health Act of 1970 (29 U.S.C. 651 et seq.), relating
2 to occupational exposure to asbestos, the Administrator
3 shall refer the matter in writing within 30 days after re-
4 ceiving that information and refer the matter to the Sec-
5 retary of Labor or the appropriate State agency with au-
6 thority to enforce occupational safety and health stand-
7 ards, for investigation for possible civil or criminal pen-
8 alties under section 17 of the Occupational Safety and
9 Health Act of 1970 (29 U.S.C. 666).

10 (d) ENHANCED CRIMINAL PENALTIES FOR WILLFUL
11 VIOLATIONS OF OCCUPATIONAL STANDARDS FOR ASBES-
12 TOS.—Section 17(e) of the Occupational Safety and
13 Health Act of 1970 (29 U.S.C. 656(e)) is amended—

14 (1) by striking “Any” and inserting “(1) Ex-
15 cept as provided in paragraph (2), any”; and

16 (2) by adding at the end the following:

17 “(2) Any employer who willfully violates any standard
18 issued under section 6 with respect to the control of occu-
19 pational exposure to asbestos, shall upon conviction be
20 punished by a fine in accordance with section 3571 of title
21 18, United States Code, or by imprisonment for not more
22 than 5 years, or both, except that if the conviction is for
23 a violation committed after a first conviction of such per-
24 son, punishment shall be by a fine in accordance with sec-

1 tion 3571 of title 18, United States Code, or by imprison-
2 ment for not more than 10 years, or both.”.

3 (e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND
4 BY EPA AND OSHA ASBESTOS VIOLATORS.—

5 (1) IN GENERAL.—The Administrator shall as-
6 sess employers or other individuals determined to
7 have violated asbestos statutes, standards, or regula-
8 tions administered by the Department of Labor, the
9 Environmental Protection Agency, and their State
10 counterparts, for contributions to the Asbestos In-
11 jury Claims Resolution Fund (in this section re-
12 ferred to as the “Fund”).

13 (2) IDENTIFICATION OF VIOLATORS.—Each
14 year, the Administrator shall—

15 (A) in consultation with the Assistant Sec-
16 retary of Labor for Occupational Safety and
17 Health, identify all employers that, during the
18 previous year, were subject to final orders find-
19 ing that they violated standards issued by the
20 Occupational Safety and Health Administration
21 for control of occupational exposure to asbestos
22 (29 CFR 1910.1001, 1915.1001, and
23 1926.1101) or the equivalent asbestos stand-
24 ards issued by any State under section 18 of

1 the Occupational Safety and Health Act (29
2 U.S.C. 668); and

3 (B) in consultation with the Administrator
4 of the Environmental Protection Agency, iden-
5 tify all employers or other individuals who, dur-
6 ing the previous year, were subject to final or-
7 ders finding that they violated asbestos regula-
8 tions administered by the Environmental Pro-
9 tection Agency (including the National Emis-
10 sions Standard for Asbestos established under
11 the Clean Air Act (42 U.S.C. 7401 et seq.), the
12 asbestos worker protection standards estab-
13 lished under part 763 of title 40, Code of Fed-
14 eral Regulations, and the regulations banning
15 asbestos promulgated under section 501 of this
16 Act), or equivalent State asbestos regulations.

17 (3) ASSESSMENT FOR CONTRIBUTION.—The
18 Administrator shall assess each such identified em-
19 ployer or other individual for a contribution to the
20 Fund for that year in an amount equal to—

21 (A) 2 times the amount of total penalties
22 assessed for the first violation of occupational
23 health and environmental statutes, standards,
24 or regulations;

1 (B) 4 times the amount of total penalties
2 for a second violation of such statutes, stand-
3 ards, or regulations; and

4 (C) 6 times the amount of total penalties
5 for any violations thereafter.

6 (4) LIABILITY.—Any assessment under this
7 subsection shall be considered a liability under this
8 Act.

9 (5) PAYMENTS.—Each such employer or other
10 individual assessed for a contribution to the Fund
11 under this subsection shall make the required con-
12 tribution to the Fund within 90 days of the date of
13 receipt of notice from the Administrator requiring
14 payment.

15 (6) ENFORCEMENT.—The Administrator is au-
16 thorized to bring a civil action pursuant to section
17 223(c) against any employer or other individual who
18 fails to make timely payment of contributions as-
19 sessed under this section.

20 (f) REVIEW OF FEDERAL SENTENCING GUIDELINES
21 FOR ENVIRONMENTAL CRIMES RELATED TO ASBES-
22 TOS.—Under section 994 of title 28, United States Code,
23 and in accordance with this section, the United States
24 Sentencing Commission shall review and amend, as appro-

1 p r i a t e , t h e U n i t e d S t a t e s S e n t e n c i n g G u i d e l i n e s a n d r e -
2 l a t e d p o l i c y s t a t e m e n t s t o e n s u r e t h a t —

3 (1) a p p r o p r i a t e c h a n g e s a r e m a d e w i t h i n t h e
4 g u i d e l i n e s t o r e f l e c t a n y s t a t u t o r y a m e n d m e n t s t h a t
5 h a v e o c c u r r e d s i n c e t h e t i m e t h a t t h e c u r r e n t g u i d e -
6 l i n e w a s p r o m u l g a t e d ;

7 (2) t h e b a s e o f f e n s e l e v e l , a d j u s t m e n t s , a n d s p e -
8 c i f i c o f f e n s e c h a r a c t e r i s t i c s c o n t a i n e d i n s e c t i o n
9 2 Q 1 . 2 o f t h e U n i t e d S t a t e s S e n t e n c i n g G u i d e l i n e s
10 (r e l a t i n g t o m i s h a n d l i n g o f h a z a r d o u s o r t o x i c s u b -
11 s t a n c e s o r p e s t i c i d e s ; r e c o r d k e e p i n g , t a m p e r i n g , a n d
12 f a l s i f i c a t i o n ; a n d u n l a w f u l l y t r a n s p o r t i n g h a z a r d o u s
13 m a t e r i a l s i n c o m m e r c e) a r e i n c r e a s e d a s a p p r o p r i a t e
14 t o e n s u r e t h a t f u t u r e a s b e s t o s - r e l a t e d o f f e n s e s r e -
15 f l e c t t h e s e r i o u s n e s s o f t h e o f f e n s e , t h e h a r m t o t h e
16 c o m m u n i t y , t h e n e e d f o r o n g o i n g r e f o r m , a n d t h e
17 h i g h l y r e g u l a t e d n a t u r e o f a s b e s t o s ;

18 (3) t h e b a s e o f f e n s e l e v e l , a d j u s t m e n t s , a n d s p e -
19 c i f i c o f f e n s e c h a r a c t e r i s t i c s a r e s u f f i c i e n t t o d e t e r
20 a n d p u n i s h f u t u r e a c t i v i t y a n d a r e a d e q u a t e i n c a s e s
21 i n w h i c h t h e r e l e v a n t o f f e n s e c o n d u c t —

22 (A) i n v o l v e s a s b e s t o s a s a h a z a r d o u s o r
23 t o x i c s u b s t a n c e ; a n d

24 (B) o c c u r s a f t e r t h e d a t e o f e n a c t m e n t o f
25 t h i s A c t ;

1 (4) the adjustments and specific offense charac-
2 teristics contained in section 2B1.1 of the United
3 States Sentencing Guidelines related to fraud, de-
4 ceit, and false statements, adequately take into ac-
5 count that asbestos was involved in the offense, and
6 the possibility of death or serious bodily harm as a
7 result;

8 (5) the guidelines that apply to organizations in
9 chapter 8 of the United States Sentencing Guide-
10 lines are sufficient to deter and punish organiza-
11 tional criminal misconduct that involves the use,
12 handling, purchase, sale, disposal, or storage of as-
13 bestos; and

14 (6) the guidelines that apply to organizations in
15 chapter 8 of the United States Sentencing Guide-
16 lines are sufficient to deter and punish organiza-
17 tional criminal misconduct that involves fraud, de-
18 ceit, or false statements against the Office of Asbes-
19 tos Disease Compensation.

20 **SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.**

21 (a) DENIAL, TERMINATION, OR ALTERATION OF
22 HEALTH COVERAGE.—No health insurer offering a health
23 plan may deny or terminate coverage, or in any way alter
24 the terms of coverage, of any claimant or the beneficiary
25 of a claimant, on account of the participation of the claim-

1 ant or beneficiary in a medical monitoring program under
2 this Act, or as a result of any information discovered as
3 a result of such medical monitoring.

4 (b) DEFINITIONS.—In this section:

5 (1) HEALTH INSURER.—The term “health in-
6 surer” means—

7 (A) an insurance company, healthcare
8 service contractor, fraternal benefit organiza-
9 tion, insurance agent, third-party administrator,
10 insurance support organization, or other person
11 subject to regulation under the laws related to
12 health insurance of any State;

13 (B) a managed care organization; or

14 (C) an employee welfare benefit plan regu-
15 lated under the Employee Retirement Income
16 Security Act of 1974 (29 U.S.C. 1001 et seq.).

17 (2) HEALTH PLAN.—The term “health plan”
18 means—

19 (A) a group health plan (as such term is
20 defined in section 607 of the Employee Retire-
21 ment Income Security Act of 1974 (29 U.S.C.
22 1167)), and a multiple employer welfare ar-
23 rangement (as defined in section 3(4) of such
24 Act) that provides health insurance coverage; or

1 (B) any contractual arrangement for the
2 provision of a payment for healthcare, including
3 any health insurance arrangement or any ar-
4 rangement consisting of a hospital or medical
5 expense incurred policy or certificate, hospital
6 or medical service plan contract, or health
7 maintenance organizing subscriber contract.

8 (c) CONFORMING AMENDMENTS.—

9 (1) ERISA.—Section 702(a)(1) of the Em-
10 ployee Retirement Income Security Act of 1974 (29
11 U.S.C. 1182(a)(1)), is amended by adding at the
12 end the following:

13 “(I) Participation in a medical monitoring
14 program under the Fairness in Asbestos Injury
15 Resolution Act of 2005.”.

16 (2) PUBLIC SERVICE HEALTH ACT.—Section
17 2702(a)(1) of the Public Health Service Act (42
18 U.S.C. 300gg–1(a)(1)) is amended by adding at the
19 end the following:

20 “(I) Participation in a medical monitoring
21 program under the Fairness in Asbestos Injury
22 Resolution Act of 2005.”.

23 (3) INTERNAL REVENUE CODE OF 1986.—Sec-
24 tion 9802(a)(1) of the Internal Revenue Code of
25 1986 is amended by adding at the end the following:

1 “(I) Participation in a medical monitoring
2 program under the Fairness in Asbestos Injury
3 Resolution Act of 2005.”.

4 **TITLE V—ASBESTOS BAN**

5 **SEC. 501. PROHIBITION ON ASBESTOS CONTAINING PROD-** 6 **UCTS.**

7 (a) IN GENERAL.—Title II of the Toxic Substances
8 Control Act (15 U.S.C. 2641 et seq.) is amended—
9 (1) by inserting before section 201 (15 U.S.C.
10 2641) the following:

11 **“Subtitle A—General Provisions”;**

12 and

13 (2) by adding at the end the following:

14 **“Subtitle B—Ban of Asbestos** 15 **Containing Products**

16 **“SEC. 221. BAN OF ASBESTOS CONTAINING PRODUCTS.**

17 “(a) DEFINITIONS.—In this chapter:

18 “(1) ADMINISTRATOR.—The term ‘Adminis-
19 trator’ means the Administrator of the Environ-
20 mental Protection Agency.

21 “(2) ASBESTOS.—The term ‘asbestos’
22 includes—

23 “(A) chrysotile;

24 “(B) amosite;

25 “(C) crocidolite;

1 “(D) tremolite asbestos;

2 “(E) winchite asbestos;

3 “(F) richterite asbestos;

4 “(G) anthophyllite asbestos;

5 “(H) actinolite asbestos;

6 “(I) any of the minerals listed under sub-
7 paragraphs (A) through (H) that has been
8 chemically treated or altered, and any
9 asbestiform variety, type, or component thereof.

10 “(3) ASBESTOS CONTAINING PRODUCT.—The
11 term ‘asbestos containing product’ means any prod-
12 uct (including any part) to which asbestos is delib-
13 erately or knowingly added or used because the spe-
14 cific properties of asbestos are necessary for product
15 use or function. Under no circumstances shall the
16 term ‘asbestos containing product’ be construed to
17 include products that contain de minimus levels of
18 naturally occurring asbestos as defined by the Ad-
19 ministrator not later than 1 year after the date of
20 enactment of this chapter.

21 “(4) DISTRIBUTE IN COMMERCE.—The term
22 ‘distribute in commerce’—

23 “(A) has the meaning given the term in
24 section 3 of the Toxic Substances Control Act
25 (15 U.S.C. 2602); and

1 “(B) shall not include—

2 “(i) an action taken with respect to
3 an asbestos containing product in connec-
4 tion with the end use of the asbestos con-
5 taining product by a person that is an end
6 user, or an action taken by a person who
7 purchases or receives a product, directly or
8 indirectly, from an end user; or

9 “(ii) distribution of an asbestos con-
10 taining product by a person solely for the
11 purpose of disposal of the asbestos con-
12 taining product in compliance with applica-
13 ble Federal, State, and local requirements.

14 “(b) IN GENERAL.—Subject to subsection (c), the
15 Administrator shall promulgate—

16 “(1) not later than 1 year after the date of en-
17 actment of this chapter, proposed regulations that—

18 “(A) prohibit persons from manufacturing,
19 processing, or distributing in commerce asbes-
20 tos containing products; and

21 “(B) provide for implementation of sub-
22 sections (c) and (d); and

23 “(2) not later than 2 years after the date of en-
24 actment of this chapter, final regulations that, effec-
25 tive 60 days after the date of promulgation, prohibit

1 persons from manufacturing, processing, or distrib-
2 uting in commerce asbestos containing products.

3 “(c) EXEMPTIONS.—

4 “(1) IN GENERAL.—Any person may petition
5 the Administrator for, and the Administrator may
6 grant, an exemption from the requirements of sub-
7 section (b), if the Administrator determines that—

8 “(A) the exemption would not result in an
9 unreasonable risk of injury to public health or
10 the environment; and

11 “(B) the person has made good faith ef-
12 forts to develop, but has been unable to develop,
13 a substance, or identify a mineral that does not
14 present an unreasonable risk of injury to public
15 health or the environment and may be sub-
16 stituted for an asbestos containing product.

17 “(2) TERMS AND CONDITIONS.—An exemption
18 granted under this subsection shall be in effect for
19 such period (not to exceed 5 years) and subject to
20 such terms and conditions as the Administrator may
21 prescribe.

22 “(3) GOVERNMENTAL USE.—

23 “(A) IN GENERAL.—The Administrator of
24 the Environmental Protection Agency shall pro-
25 vide an exemption from the requirements of

1 subsection (b), without review or limit on dura-
2 tion, if such exemption for an asbestos con-
3 taining product is—

4 “(i) sought by the Secretary of De-
5 fense and the Secretary certifies, and pro-
6 vides a copy of that certification to Con-
7 gress, that—

8 “(I) use of the asbestos con-
9 taining product is necessary to the
10 critical functions of the Department;

11 “(II) no reasonable alternatives
12 to the asbestos containing product
13 exist for the intended purpose; and

14 “(III) use of the asbestos con-
15 taining product will not result in an
16 unreasonable risk to health or the en-
17 vironment; or

18 “(ii) sought by the Administrator of
19 the National Aeronautics and Space Ad-
20 ministration and the Administrator of the
21 National Aeronautics and Space Adminis-
22 tration certifies, and provides a copy of
23 that certification to Congress, that—

24 “(I) the asbestos containing
25 product is necessary to the critical

1 functions of the National Aeronautics
2 and Space Administration;

3 “(II) no reasonable alternatives
4 to the asbestos containing product
5 exist for the intended purpose; and

6 “(III) the use of the asbestos
7 containing product will not result in
8 an unreasonable risk to health or the
9 environment.

10 “(B) ADMINISTRATIVE PROCEDURE ACT.—
11 Any certification required under subparagraph
12 (A) shall not be subject to chapter 5 of title 5,
13 United States Code (commonly referred to as
14 the ‘Administrative Procedure Act’).

15 “(4) SPECIFIC EXEMPTIONS.—The following
16 are exempted:

17 “(A) Asbestos diaphragms for use in the
18 manufacture of chlor-alkali and the products
19 and derivative therefrom.

20 “(B) Roofing cements, coatings, and
21 mastics utilizing asbestos that is totally encap-
22 sulated with asphalt, subject to a determination
23 by the Administrator of the Environmental Pro-
24 tection Agency under paragraph (5).

1 “(5) ENVIRONMENTAL PROTECTION AGENCY
2 REVIEW.—

3 “(A) REVIEW IN 18 MONTHS.—Not later
4 than 18 months after the date of enactment of
5 this chapter, the Administrator of the Environ-
6 mental Protection Agency shall complete a re-
7 view of the exemption for roofing cements, coat-
8 ings, and mastics utilizing asbestos that are to-
9 tally encapsulated with asphalt to determine
10 whether—

11 “(i) the exemption would result in an
12 unreasonable risk of injury to public health
13 or the environment; and

14 “(ii) there are reasonable, commercial
15 alternatives to the roofing cements, coat-
16 ings, and mastics utilizing asbestos that is
17 totally encapsulated with asphalt.

18 “(B) REVOCATION OF EXEMPTION.—Upon
19 completion of the review, the Administrator of
20 the Environmental Protection Agency shall have
21 the authority to revoke the exemption for the
22 products exempted under paragraph (4)(B), if
23 warranted.

24 “(d) DISPOSAL.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), not later than 3 years after the date of
3 enactment of this chapter, each person that pos-
4 sesses an asbestos containing product that is subject
5 to the prohibition established under this section shall
6 dispose of the asbestos containing product, by a
7 means that is in compliance with applicable Federal,
8 State, and local requirements.

9 “(2) EXEMPTION.—Nothing in paragraph (1)—
10 “(A) applies to an asbestos containing
11 product that—

12 “(i) is no longer in the stream of com-
13 merce; or

14 “(ii) is in the possession of an end
15 user or a person who purchases or receives
16 an asbestos containing product directly or
17 indirectly from an end user; or

18 “(B) requires that an asbestos containing
19 product described in subparagraph (A) be re-
20 moved or replaced.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
22 The table of contents in section 1 of the Toxic Substances
23 Control Act (15 U.S.C. prec. 2601) is amended—

1 (1) by inserting before the item relating to sec-
2 tion 201 the following:

 “SUBTITLE A—GENERAL PROVISIONS”;

3 and

4 (2) by adding at the end of the items relating
5 to title II the following:

 “SUBTITLE B—BAN OF ASBESTOS CONTAINING PRODUCTS

“Sec. 221. Ban of asbestos containing products.”.